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**Legislative Assembly  
of Ontario**

Second Session, 40<sup>th</sup> Parliament

**Assemblée législative  
de l'Ontario**

Deuxième session, 40<sup>e</sup> législature

**Official Report  
of Debates  
(Hansard)**

Thursday 28 February 2013



**Journal  
des débats  
(Hansard)**

Jeudi 28 février 2013

**Standing Committee on  
Justice Policy**

Organization

**Comité permanent  
de la justice**

Organisation



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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE POLICYCOMITÉ PERMANENT  
DE LA JUSTICE

Thursday 28 February 2013

Jeudi 28 février 2013

*The committee met at 0906 in committee room 1.*

## ELECTION OF CHAIR

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Good morning, honourable members. It is my duty to call upon you to elect a Chair. Pursuant to standing order 117(c) and the sessional paper that was tabled on November 24, 2011, the Chair of the Standing Committee on Justice Policy must be a member of the government.

Are there any nominations? Mr. Delaney?

**Mr. Bob Delaney:** Thank you very much, Clerk. It's my pleasure to nominate Shafiq Qaadri as Chair of the committee.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Does the member accept the nomination?

**Mr. Shafiq Qaadri:** I am honoured to accept the nomination.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Are there any further nominations?

**Mr. Gilles Bisson:** Bob Delaney.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** There being no further nominations, I declare the nominations closed, and Mr. Qaadri elected Chair of the committee.

## ELECTION OF VICE-CHAIR

**The Chair (Mr. Shafiq Qaadri):** Thank you very much, Ms. Pomanski, and thank you, colleagues, for your extreme confidence in electing me Chair of the justice policy committee.

We have a number of items to attend to. At the outset, I would like to invite the election of the Vice-Chair. Mr. Del Duca?

**Mr. Steven Del Duca:** Thank you, Mr. Chair. It's my pleasure to nominate Ms. Albanese as Vice-Chair.

**Mr. Shafiq Qaadri:** Madame Albanese, do you accept said nomination?

**Mrs. Laura Albanese:** I am honoured to accept such nomination.

**Mr. Shafiq Qaadri:** Seeing no further nominations, I will congratulate you, Ms. Albanese, on being elected the Vice-Chair.

## APPOINTMENT OF SUBCOMMITTEE

**The Chair (Mr. Shafiq Qaadri):** May we now move to the subcommittee? Mr. Natyshak?

**Mr. Taras Natyshak:** Thank you, Chair. I move that a subcommittee on committee business be appointed to meet from time to time at the call of the Chair or at the request of any member thereof, to consider and report to the committee on the business of the committee;

That the presence of all members of the subcommittee is necessary to constitute a meeting; and

That the subcommittee be composed of the following members: the Chair as Chair, Mr. Delaney, Ms. Armstrong, Mr. MacLaren; and

That substitution be permitted on the subcommittee.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Natyshak. Any discussion on that subcommittee motion? All in favour? Carried—none opposed. I congratulate you on the formation of the subcommittee.

## COMMITTEE BUSINESS

**The Chair (Mr. Shafiq Qaadri):** Is there any further business before this committee? Mr. Delaney.

**Mr. Bob Delaney:** Chair, I'd like to beg leave to make a motion pertaining to the terms of reference for the Standing Committee on Justice Policy.

**The Chair (Mr. Shafiq Qaadri):** Please present your motion, Mr. Delaney.

**Mr. Bob Delaney:** Okay. Chair, I move that, pursuant to standing order 110(b), the Standing Committee on Justice Policy directs the government of Ontario, including ministries, ministers' offices, the Cabinet Office and the Office of the Premier; the Ontario Infrastructure and Lands Corp.; and the Ontario Power Authority to produce, within 10 sessional days from the date of this motion, any and all identified paper and electronic files and records, including but not limited to correspondence, briefing notes, emails, memoranda, issue or House book notes, opinions and submissions, and including any drafts of or attachments to those records, that occurred between September 1, 2010, and October 15, 2012, related to the cancellation of the Oakville power plant, and that occurred between August 1, 2011, and October 15, 2012,



related to the cancellation of the Mississauga power plant;

Within five sessional days of the passage of this motion, the secretary of cabinet shall provide for the committee's approval a detailed work plan, including parameters and processes to be undertaken to identify the responsive documents;

Within four sessional days of the passage of this motion, the committee shall identify search terms to be used to conduct the search. At any time, the committee may exercise its authority to modify the list of search terms.

The records be produced notwithstanding any legal privilege or statutory confidentiality, except that the secretary shall identify those records subject to any such claim of privilege or confidentiality so that the committee may determine appropriate steps to be taken to address those claims of privilege or confidentiality;

The records shall be tabled with the Clerk of the Committee, along with an explanation of the search terms, parameters and processes;

The committee may exercise its authority pursuant to standing order 110(b) to order any further records or request any further search it considers relevant to this motion;

Where the secretary is unable to comply with the motion by the 10 sessional days, he shall table immediately with the Clerk a copy of any and all records collected pursuant to the terms of this motion, with an explanation of the further steps that will be taken to comply with the motion, along with an estimate of the time required for such compliance.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney. I think for committee members to better sense and appreciate and deliberate on this, we'll need to take a little time to make copies and then we'll reconvene. Is that agreeable to the committee?

**Mr. Gilles Bisson:** Is it an order—

**The Chair (Mr. Shafiq Qaadri):** I believe that's also to be considered, Monsieur Bisson.

**Mr. Gilles Bisson:** Because, just for the record, an order of the House giving us our—

*Interjection.*

**Mr. Gilles Bisson:** Yeah, okay.

**The Chair (Mr. Shafiq Qaadri):** All right. So, agreeable, then, gentlemen, ladies?

As fast as the—

*Interjection.*

**The Chair (Mr. Shafiq Qaadri):** Tamara, time? ETA, please?

**Mr. Gilles Bisson:** Shall we return at, let's say, 2 o'clock this afternoon?

**The Chair (Mr. Shafiq Qaadri):** I think we're entertaining both pathways here. We can have it done instantaneously and return, or reconvene this afternoon.

**Mr. Peter Tabuns:** I move a motion that we return at 2 p.m. today.

**The Chair (Mr. Shafiq Qaadri):** Is that agreeable?

**Mr. Rob Leone:** And we'll have copies of the motion?

**The Chair (Mr. Shafiq Qaadri):** Yes, of course.

Fine. All those in favour of reconvening at 2 p.m., the motion of—

*Interjection.*

**The Chair (Mr. Shafiq Qaadri):** Well, we'll accept that. All right. Therefore, we will reconvene. Committee is recessed till then. Thank you.

*The committee recessed from 0912 to 1403.*

**Le Président (M. Shafiq Qaadri):** Chers collègues, j'appelle à l'ordre cette séance du comité de la justice.

We're now reconvening, and I thank members for their indulgence, not only with the election, the sub-committee, Vice-Chair, Chair and the entertainment of the motion.

Are there any comments before we consider it? Mr. Leone.

**Mr. Rob Leone:** Mr. Chair, we would like a ruling on whether the motion that we received this morning, presented by Mr. Delaney, is actually in order.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Leone. Has every member of the committee received the motion in writing? Fair enough.

**Mr. Bob Delaney:** Chair, on a point of order.

**The Chair (Mr. Shafiq Qaadri):** Yes, Mr. Delaney.

**Mr. Bob Delaney:** I am aware that the House leaders are even now discussing this motion and its implications to the mandate of the committee. May I request that we defer your ruling on whether or not the motion is in order, pending a decision by the House leaders?

**The Chair (Mr. Shafiq Qaadri):** Mr. Delaney has asked, as I understand it, a deferral of the consideration of the validity of this motion.

**Mr. Bob Delaney:** Correct.

**The Chair (Mr. Shafiq Qaadri):** Is that the will of the committee?

**Interjection:** No.

**The Chair (Mr. Shafiq Qaadri):** It is not the will of the committee.

The Chair will now proceed to rule. As I have been edified by the various researchers here, I understand that this particular motion is out of the scope of this committee. There's some very entertaining reasoning why, and I would turn that over to procedural Clerk Peter for the description.

**Mr. Peter Sibenik:** Thank you very much. The rationale is that a committee may only deal with matters within its mandate as determined by the House. Consequently, the committee would be restricted to dealing with the specifics of the motion that apply to the committee.

The committee does not have the authority to deal with any aspect of the tabling of documents.

The mandate of this committee is to consider and report to the House on the matter of the Speaker's finding of a prima facie case of privilege with respect to the production of documents by the Minister of Energy and the Ontario Power Authority, as ordered by the Standing Committee on Estimates on May 16, 2012.



**The Chair (Mr. Shafiq Qaadri):** Thanks to our procedural clerk. That is the official ruling and the justification thereof. This motion is now ruled out of order and now dispensed with.

**Mr. Peter Tabuns:** I would then move adjournment of the committee until 9 a.m. Tuesday morning.

**The Chair (Mr. Shafiq Qaadri):** I would respectfully entertain that in a moment. Just before we do that, if I might, Mr. Tabuns, there is a small matter of the assignment of the subcommittee, meaning the next meeting. My respectful suggestion is, we do it in person on Monday at some point, and that will arrange that. Is that agreeable to the committee, to decide, for example, things like when the committee will meet and so on? All right?

**Mr. Peter Tabuns:** I'm agreeable to that.

**The Chair (Mr. Shafiq Qaadri):** All right; duly done. Is there any further discussion—yes, Mr. Yakabuski?

**Mr. John Yakabuski:** Well, on the decision of the Chair and with the advice of the procedural clerk, I think we do have some comments. I'm going to let my colleague Mr. Leone speak first, and I may have some things to say later.

**Mr. Bob Delaney:** On a point of order: The issue has been decided. There is nothing to discuss.

**Mr. John Yakabuski:** —we have some things to say.

**The Chair (Mr. Shafiq Qaadri):** Understood, Mr. Delaney. I think they still have the floor in terms of any further business. Mr. Leone.

**Mr. Rob Leone:** I do have a few comments to make. I'm very concerned that this committee—

**Mr. Bob Delaney:** Chair, on a point of order: Mr. Tabuns has a motion on the floor—

**Mr. John Yakabuski:** And we're debating it.

**Interjection:** Regarding adjournment.

**Mr. Bob Delaney:** —regarding adjournment.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney, for pointing that out yet again. Mr. Leone.

**Mr. Rob Leone:** So we are debating the adjournment—

**Mr. Bob Delaney:** Chair, a motion to adjourn cannot be debated.

**The Chair (Mr. Shafiq Qaadri):** Because the motion to adjourn is projected for Tuesday as opposed to any other day of the calendar, it is apparently a debatable motion, which I would now like to engage. So thank you again, Mr. Delaney.

Mr. Leone.

**Mr. Rob Leone:** Well, finally I can get this out, Mr. Chair. I'm disgusted about what happened today. We have a motion that was drafted without the consultation of the Clerks and was already ruled out of order. We have seen in the press today a charade of a dog-and-pony show of what we'll be talking about in this committee or what the scope of this committee is going to be. This is just an unacceptable practice that we're engaged in right here.

We know that the media is at least reporting—and there's a couple of articles that we've seen that essentially say that the Liberal Party documents are going to also be forthcoming. In the motion that was presented in this committee there's no such indication that the Liberal Party has actually been included in the document request—

**The Chair (Mr. Shafiq Qaadri):** Mr. Leone, just before you continue, I'd just respectfully remind all individuals who'd like the floor currently that we are actually supposed to be debating the motion to adjourn till Tuesday 9 a.m., and would invite you to do so.

**Mr. Rob Leone:** In the process of debating that motion to adjourn, Mr. Chair, I do have to express my disappointment that we've been waiting for four months to discuss the matters before us. We've been waiting for four months and now we're here debating an adjournment of this debate again till Tuesday—further time being wasted with respect to getting to the bottom of what's happened with the—I'll use the word “cover-up,” in terms of the politically motivated decisions to cancel two power plants. We cannot allow this to continue. I strongly urge this committee to continue to talk about the issues.

We have a number of questions that we have before us. The House has ordered us to meet, and I strongly urge the committee members to consider that. Our business is to talk about how this committee will conduct itself. We had a motion that was put before us that's now ruled out of order. We have another charade that's happening with House leaders right now. We have to get to the bottom of this, and the more delay, the longer it will take to get the answers we seek. I just find this whole debate completely unacceptable. People have asked us to do this work. We should be doing this work today.

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**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Leone. Mr. Fedeli has the floor.

**Mr. Victor Fedeli:** Thank you, Chair. I would like to discuss the motion to adjourn to Tuesday with the following comments: Clearly, this entire charade was all about the spin. Putting forward a motion that's out of order and clearly knowing in advance that this motion would be ruled out of order was all a charade to delay—I continue to bring up the word “delay” because we're talking about delaying until Tuesday, as I continue to speak about the motion to adjourn. This particular spin on the delay was so that the Premier can stand outside and say, and I quote from our friend Rob Ferguson, sitting here, “Premier Kathleen Wynne admits the Liberals made a ‘political’ decision ... and has pledged to reveal more government and party documents on the controversy.”

This may indeed be what the Premier told the media, but in the motion that we are now seeing ruled out of order, that we won't be able to discuss on Tuesday, there is no mention of the Liberal Party. That was part of the charade. Again, first the charade was to meet in here. The second charade is to tell the media one thing, but have



the actual document be completely different. This was nothing other than intended to cover up the cover-up of the cover-up, and I can't tolerate that any further, Chair.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli. I would just re-invite all members to engage in what is truly parliamentary language, but anyway, since it's our opening meeting, I'll permit what's just passed.

**Mr. John Yakabuski:** We will certainly keep this parliamentary, Chair; I can assure you of that.

The word "disgusting" is certainly parliamentary, isn't it? Because that's what we saw today: a disgusting exercise to protect Liberals as opposed to getting to the bottom of the scandal dealing with the gas plants. Knowingly—I mean, the staff working for the Liberal Party and the Premier's office, who—she made a big deal about calling the media together this morning to say, "I have ordered the committee—I've got a motion before the committee that is going to deal with the gas plant issue. I've got a motion that says we're going to reveal even more. We're going to take this to all ministries."

They knew then that the motion was out of order. That's misleading. That's dishonest. That's wrong. When you go out to the media and say, "We've got a big announcement"—

**The Chair (Mr. Shafiq Qaadri):** Mr. Yakabuski, I think I'm going to have to intervene there, despite your sincere attempts, to ask you to please rephrase.

**Mr. John Yakabuski:** I didn't accuse anybody in particular of being misleading or wrong—

**The Chair (Mr. Shafiq Qaadri):** My misinterpretation; I apologize. Go ahead.

**Mr. John Yakabuski:** I said when "you," meaning "the Liberal Party"—the Liberal Party is not a person. The Liberal Party is misleading. The Liberal Party is wrong when they produce a document like this and say, "This is what we've got: a new announcement to be made about how we're going to be even more transparent and more open in this committee." And they knew all along that it was a game; it was a charade to send their three puppets in here to be able to sit here and bring out a motion: "Oh, look at what we're going to do. Look at what we're doing for the people in Ontario." Within a few short hours, we know that it's completely wrong and out of order.

The people of Ontario want the truth. They want to get to the bottom of what happened here. They want to know who pulled the strings, they want to know who pushed the buttons, they want to know who made the decisions, and they want to know how much it has cost them already—the real numbers—and how much it's going to cost them through the length of the term of this contract. That's what this committee's business is, and it's also to deal with the contempt motion that was in the House earlier this year. Chair, not only has this motion been ruled out of order, it was—I'm trying to think of a parliamentary word—just very, very wrong to bring it forth in the first place before this committee.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Yakabuski. Is the committee ready to entertain—Mr. Leone?

**Mr. Rob Leone:** Mr. Chair, in addition to the comments I previously made, there are other issues and matters I wished to bring to this committee today: to talk about the format for which these proceedings would occur with respect to—I was prepared to move a motion earlier this morning about putting these proceedings on webcast. All of these kinds of things we could be dealing with today will not be able to be dealt with if we adjourn this committee.

On another matter, Mr. Chair, I do have one question for the legal counsel of this committee, and that is, if we had reintroduced this motion to include the Liberal Party as a party to release documents, would this motion, in fact, be in order?

**The Chair (Mr. Shafiq Qaadri):** So you're asking legal counsel formally for a ruling on that?

**Mr. Rob Leone:** Yes.

**The Chair (Mr. Shafiq Qaadri):** Fine. Are you prepared to—

**Mr. Peter Sibenik:** It won't matter; it's a matter of orders. If the initial motion has been ruled out of order by the Chair, the addition of such an amendment does not make it more in order. It would still be out of order.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Sibenik.

Are there any further—yes?

**Mr. Victor Fedeli:** Thank you. This is specifically referring now—this is not about the scandal or the charade of this morning. This is specifically referring to the motion to adjourn.

I wish to move an amendment to the motion to adjourn: that all witnesses called before the committee be required to swear an oath or affirm that they shall tell the truth, the whole truth and nothing but the truth.

I wish to add an amendment: that all meetings of the standing committee on justice related to the matter of privilege henceforth be held in a televised committee room, and that committees branch be directed to ensure—

**Mr. Bob Delaney:** On a point of order, Chair.

**Mr. Victor Fedeli:** —all proceedings of this committee are web-broadcasted; and that Hansard be directed to ensure testimony for this committee be made a top priority behind that of the House; and thirdly, Chair, that the standing committee on justice retain counsel forthwith for the purposes of providing guidance and legal advice to members of the committee and their advisers.

**The Chair (Mr. Shafiq Qaadri):** All right. Before we rule, I'd just entertain Mr. Delaney's point of order.

**Mr. Bob Delaney:** First of all, Chair, Mr. Fedeli's comments had nothing to do with a motion to adjourn. Secondly, you can't amend a motion to adjourn. Finally, Chair, the—

*Interjections.*

**Mr. Bob Delaney:** Chair?

**The Chair (Mr. Shafiq Qaadri):** I am advised, Mr. Fedeli, that those amendments that you just put forward are also out of order. We would now need to—



**Mr. Victor Fedeli:** Can you explain to me why, perhaps? I'm new here and I don't understand that.

**The Chair (Mr. Shafiq Qaadri):** I will seek that.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** I can do that.

**The Chair (Mr. Shafiq Qaadri):** Please.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Basically, what we should do is that—those amendments aren't related to the motion that's before the floor right now. We would have to deal with the motion at the time right now in terms of—if everyone has finished speaking to it, we'll vote on it.

Another option, Mr. Fedeli: Your concerns and your amendments could be dealt with in subcommittee on Monday, as an option. Then we can bring it back to full committee and vote on it in terms of if you want it to live-stream etc. and broadcast and all that. Those are all logistics that can be worked out with the subcommittee on Monday afternoon, and then we can bring it to full committee for a vote the next time the committee meets.

*Interjection.*

**Mr. Rob Leone:** Excuse us. Thank you. We were under the impression from the advice that we've received that this motion was amendable. Peter, could you comment on that?

**Mr. Peter Sibenik:** A debatable motion is amendable, but the amendments have to be related to the main motion. That's the—

**The Clerk of the Committee (Ms. Tamara Poman-ski):** The main motion is to adjourn.

**Mr. Peter Sibenik:** The motion is to adjourn.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Until Tuesday.

**Mr. Rob Leone:** All right.

**The Chair (Mr. Shafiq Qaadri):** Mr. Wilson.

**Mr. Jim Wilson:** It seems to me that Mr. Fedeli's amendments do pertain to the main motion, in that we'd like these things in place—if the motion passes—by the time we reconvene on Tuesday. These are things that

have to be dealt with by staff, and we're asking this all to be done: the media broadcast and at least a report back by Tuesday. So why wouldn't it pertain to the main motion?

**The Chair (Mr. Shafiq Qaadri):** I certainly, Mr. Wilson, respect your opinion. But as I say, we've been advised by both legal counsel and the Clerk that those motions are out of order.

I will now invite us to please move to the motion for adjournment, unless there are any further comments. Mr. Delaney?

**Mr. Bob Delaney:** Chair, just one final comment after listening to the grandstanding here. The purpose of the motion this morning was to actually offer the PC Party not only what they asked for, but a superset of what they asked for. The government has offered all of the documents in its possession.

Now, Chair, our remarks are concluded.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney.

I would also respectfully remind the government side—

*Interjections.*

**The Chair (Mr. Shafiq Qaadri):** Order, please. Order.

Thank you, Mr. Delaney, for your remarks. I also just respectfully remind you that we are actually entertaining reference to the adjournment motion. Are there any further comments directly on that? Mr. Fedeli.

**Mr. Victor Fedeli:** Yes, I do have a comment related to the motion, especially on the last comment related to the motion, when I don't see any of that in here, Chair. I don't see that here. I don't know why the member has made that up. I just can't even begin to imagine.

**The Chair (Mr. Shafiq Qaadri):** Thank you. I think it's time we proceeded to the vote. Those in favour of the motion to adjourn till Tuesday at 9 a.m.? Those opposed? I believe it's carried.

This committee stands adjourned.

*The committee adjourned at 1421.*

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Tuesday 5 March 2013



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Mardi 5 mars 2013

**Standing Committee on  
Justice Policy**

Subcommittee report

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**Comité permanent  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE POLICYCOMITÉ PERMANENT  
DE LA JUSTICE

Tuesday 5 March 2013

Mardi 5 mars 2013

*The committee met at 0901 in committee room 151.*

**The Chair (Mr. Shafiq Qaadri):** Chers collègues, j'appelle à l'ordre cette séance du comité de la justice. Colleagues, I call this meeting of the justice policy committee officially to order.

The first order of business is to consider the subcommittee report. May I have—Mr. Tabuns?

**Mr. Peter Tabuns:** Mr. Chair, as you're aware, our House leaders have had discussions, and based on those discussions, I move adjournment of this meeting to 3:45 today.

**The Chair (Mr. Shafiq Qaadri):** Since you have specified a time, the motion to adjourn to 3:45 p.m. is a debatable motion.

Any comments with reference to the motion to adjourn until 3:45 p.m.?

**Mr. Rob Leone:** I have a comment.

**The Chair (Mr. Shafiq Qaadri):** Yes, sir. Mr. Leone.

**Mr. Rob Leone:** Is it that the subcommittee will still be meeting at 3:15 today?

**The Chair (Mr. Shafiq Qaadri):** That is my understanding.

**Mr. Peter Tabuns:** Yes.

**Mr. Rob Leone:** Is everyone clear with that?

**The Chair (Mr. Shafiq Qaadri):** I think so.

Any further comments with reference to this motion? All in favour? All opposed?

I thank you for your laborious deliberations. This committee is adjourned.

*The committee recessed from 0902 to 1549.*

**The Chair (Mr. Shafiq Qaadri):** Colleagues, I call to order the Standing Committee on Justice Policy. We have—

**Mr. Bob Delaney:** Chair?

**The Chair (Mr. Shafiq Qaadri):** Mr. Delaney?

**Mr. Bob Delaney:** I'm sorry, Chair. On a point of order: I would like to make a motion pursuant to the unanimous consent in the House. At the Chair's discretion, I can make it either before or after the report on the subcommittee.

**The Chair (Mr. Shafiq Qaadri):** Thank you for your suggestion, Mr. Delaney. I think we probably do need to deal with the subcommittee report.

*Interjection.*

**The Chair (Mr. Shafiq Qaadri):** I am advised by our Clerk that we would like to take, in the spirit that we seem to have established, another 15-minute recess to re-

establish the subcommittee report as was just discussed by the subcommittee. Is that agreeable?

*Interjection.*

**The Chair (Mr. Shafiq Qaadri):** Correct. Thank you. The committee is now recessed—15 minutes precisely.

**Mr. John Yakabuski:** Can we make that 20? If we're going to recess, I have to deal with something at 4 o'clock. I thought we'd be out of here, and I need—

**The Chair (Mr. Shafiq Qaadri):** Twenty?

**Interjection:** Twenty is fine.

**The Chair (Mr. Shafiq Qaadri):** So to be clear, that's about four-tenish.

*The committee recessed from 1550 to 1613.*

**The Chair (Mr. Shafiq Qaadri):** Thank you, colleagues. I reconvene the Standing Committee on Justice Policy. As you know, we have two orders so far before the committee. One is the subcommittee report, then I'll yield the floor to Mr. Delaney, who raised a point of order before we recessed.

## SUBCOMMITTEE REPORT

**The Chair (Mr. Shafiq Qaadri):** May I have someone please move the subcommittee report? Mr. Del Duca.

**Mr. Steven Del Duca:** Your subcommittee on committee business met on Monday, March 4, 2013, and Tuesday, March 5, 2013, to consider the method of proceeding on the orders of the House dated February 20, 2013, and March 5, 2013:

(1) That all meetings of the Standing Committee on Justice Policy be held in committee room 151 and that the Chair be authorized to request this room from another committee, if not available.

(2) That all committee meetings are live-streamed on the Legislative Assembly website, if possible.

(3) That the Chair request that the Standing Committee on Justice Policy's Hansard be given priority behind that of the House.

(4) That witnesses be sworn in or affirmed before giving testimony to the committee.

(5) That all witnesses be limited to five minutes for their opening statement.

(6) That the questioning of each witness be conducted in rounds and that members be allowed to use time from a future round of questioning of the same witness.

(7) That the committee retains legal counsel for the purposes of this review, and that the proceedings of the committee continue prior to the retention of legal counsel.

(8) That the Clerk of the Committee, in consultation with the Chair, be authorized to commence making any preliminary arrangements necessary to facilitate the committee's proceedings prior to the adoption of this report.

I move that the subcommittee report be adopted.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Del Duca, for moving the subcommittee report.

Is there any discussion, issues, before we take a vote? Mr. Tabuns.

**Mr. Peter Tabuns:** I have no discussion. I'm ready to go to the vote.

**The Chair (Mr. Shafiq Qaadri):** We welcome your enthusiasm.

Ms. Albanese.

**Mrs. Laura Albanese:** I do have a concern. I have a problem about the prospect of calling witnesses prior to having counsel available to us, so I would like to suggest an amendment that no witnesses are called until legal counsel is retained. I'm referring to number 7, where it says "the proceedings of the committee continue prior to the retention of legal counsel." We can certainly proceed, the committee can meet, but perhaps the amendment could say that we refrain from calling witnesses until legal counsel is retained, just for a question of fairness, I think.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Ms. Albanese.

Is that understood by the committee? So the amendment to the subcommittee report: No witnesses to be called until legal counsel is retained.

**Mr. Peter Tabuns:** I understand it, and I'd like to be put on the list to speak to it.

**The Chair (Mr. Shafiq Qaadri):** That's fine. We'll discuss the amendment before we vote on the full subcommittee report. The floor is now open for that discussion. Mr. Tabuns.

**Mr. Peter Tabuns:** If I may speak, Mr. Chair, we went through this discussion in the subcommittee. The legal counsel serves the committee. It's not a service for witnesses; it is for us to be able to address, question, and it provides us with support if there are tricky legal questions that we have to have answered.

We are prepared to proceed to hear witnesses now. We don't need to wait for a lawyer. I don't think it helps this committee to suggest that we wait for that contract to be signed, that commitment to be made. So I would advise other members of the committee to reject your amendment.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns. Just to make it clear for committee members, as you very rightly pointed out in the subcommittee discussion, legal counsel is for the committee, not for the witnesses who are potentially coming forward.

Is there any other discussion regarding this amendment to the subcommittee report? Mr. Leone.

**Mr. Rob Leone:** I concur with Mr. Tabuns on this. I think that, as we've discussed in the subcommittee, there is—in the absence of agreeing to having legal counsel, we would be proceeding with the discussion and questioning of witnesses.

We've waited a long time to start talking to witnesses. We have an obligation, as a committee, to do what the House has asked us to do, which is to investigate the release of documents, the potential cover-up that could lead to a contempt of this Legislature. That is our primary obligation, and we have to move on that as quickly as possible, without delay.

I would not support that amendment. I think that we need to start seeing witnesses at our earliest possible date.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Leone. Mr. Delaney.

**Mr. Bob Delaney:** Chair, there is no suggestion or implication in the proposed amendment that would contravene the subcommittee's agreement. It does recognize that legal counsel is here for the committee and not for the witnesses. The intent here would be if, for example, a witness should ask what their rights are under the charter—that is a legitimate question to ask of the committee's counsel. Also, the subcommittee report asks all witnesses to swear an oath.

We just did this for the purpose of fairness to the committee. If it is not the committee's wish to support the amendment, we will withdraw the amendment.

1620

**Mrs. Laura Albanese:** It is a legitimate concern that I have brought forward; it's not in any way to stall the committee in any regard. It's just a legitimate concern of fairness to the people who will be appearing in front of our committee, that's all.

**The Chair (Mr. Shafiq Qaadri):** Thank you. I think we've canvassed opinion adequately. We can, then, proceed to the vote on this particular amendment.

Those in favour of this amendment, again regarding legal counsel and witnesses and so on; those in favour, if any? Those opposed? That amendment is defeated.

Is there any discussion now with reference to the full subcommittee report?

Seeing none—going once—those in favour of the subcommittee report as moved by Mr. Del Duca? Those opposed? The subcommittee report is duly adopted.

## COMMITTEE BUSINESS

**The Chair (Mr. Shafiq Qaadri):** We are now at next business, so the floor is open. Mr. Delaney.

**Mr. Bob Delaney:** Thank you very much, Chair. I'd like to make a motion pursuant to standing order 110(b) and the unanimous consent motion in the House.

I move that, pursuant to standing order 110(b):

The Standing Committee on Justice Policy (the "committee") directs the government of Ontario, including ministries, ministers' offices, the Cabinet Office and the Office of the Premier; the Ontario Infrastructure and



Lands Corp.; the Ontario Power Authority; (hereafter referred to as “the parties subject to this motion”) to produce any and all identified paper and electronic files and records, including but not limited to correspondence, briefing notes, emails, memoranda, issue or House book notes, opinions, and submissions, and including any drafts of or attachments to those records, that occurred between September 1, 2010, and October 15, 2012, related to the cancellation of the Oakville power plant and that occurred between August 1, 2011, and October 15, 2012, related to the cancellation of the Mississauga power plant;

The committee further orders the Ontario Liberal Party, the Progressive Conservative Party of Ontario, and the Ontario New Democratic Party (also hereafter referred to as “the parties subject to this motion”) to produce any and all identified paper and electronic files and records, including but not limited to correspondence, briefing notes, emails, memoranda, issue notes, and opinions, and including any drafts of or attachments to those records, that are under their custody and control, related to the cancellation of the Oakville or Mississauga power plants that were created, sent or received between September 7, 2011, and Thursday, October 6, 2011;

By Friday, March 8, 2013, the committee shall identify search terms to be used to conduct the search and provide those terms to the parties subject to this motion. At any time, the committee may exercise its authority to modify the list of search terms;

Within three (3) sessional days of the passage of this motion, the secretary of cabinet (the “secretary”) shall provide for the committee’s approval a detailed work plan, including parameters and processes to be undertaken to identify the responsive documents in the custody and control of the Ontario public service;

Within seven (7) sessional days of this committee’s approval of the secretary’s work plan, the government of Ontario shall produce to the committee any and all documents responsive to the committee’s request;

All other parties subject to this motion shall produce to the committee any and all documents responsive to the committee’s request within the later of ten (10) sessional days of the passage of this motion or the date by which the government of Ontario must produce its records as outlined in the preceding paragraph;

The records will be produced notwithstanding any legal privilege or statutory confidentiality, except that any party subject to this motion may identify those records subject to any such claim of privilege or confidentiality so that the committee may determine appropriate steps to be taken to address those claims of privilege or confidentiality;

The records shall be tabled with the Clerk of the committee, along with an explanation of the search terms, parameters and processes;

The committee may exercise its authority pursuant to standing order 110(b) to order any further records or request any further search it considers relevant to this motion;

Where a party subject to this motion is unable to comply with the motion by the required time period, that party shall table immediately with the Clerk a copy of any and all records collected pursuant to the terms of this motion, with an explanation of the further steps that will be taken to comply with the motion, along with an estimate of the time required for such compliance.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney. With the committee’s indulgence, I will now once again—established tradition—need to recess for us to consider and review this particular motion. I once again thank the committee for its indulgence. We’re looking at 15 minutes—approximately 4:40 p.m. The committee is now recessed.

*The committee recessed from 1625 to 1643.*

**The Chair (Mr. Shafiq Qaadri):** Thank you, committee members. Once again, we reconvene. I think all of you should have received copies of the motion presented by Mr. Delaney. I inform you that, as it stands currently, particularly with offending paragraph number 2, it is out of order.

**Mr. Bob Delaney:** Chair?

**The Chair (Mr. Shafiq Qaadri):** Mr. Delaney, did you have something to say?

**Mr. Bob Delaney:** I would like to take that motion and ask the Chair, would it be in order without paragraph 2?

**The Chair (Mr. Shafiq Qaadri):** Yes, not only without paragraph 2; you’re also, I understand, able to amend it.

**Mr. Bob Delaney:** Okay. As I am able to amend it, Chair, I move that paragraph 2 be struck from the motion previously tabled. Do I need to re-read it?

**The Chair (Mr. Shafiq Qaadri):** No, that’s fine.

So the floor is now open for debate on the amendment, which essentially—well, completely—removes paragraph 2. Are there any speakers to that?

Mr. Leone.

*Interjection.*

**The Chair (Mr. Shafiq Qaadri):** On the amendment of removal.

**Mr. Rob Leone:** So we’re clear, my interest in this has been to stop the political games, stop the charade, stop inserting motions, and get to the bottom of what we’ve been asked to do by the House, which is to investigate the release of documents with respect to the Mississauga and Oakville power plants.

I don’t understand how we continue to have, at the eleventh hour, motions put upon this committee. We haven’t seen a witness yet. We haven’t talked to anybody yet. We need to get to the investigation that we’ve been asked to complete. We need to do that as soon as possible. So, whether this motion has been amended or not, all we’re doing here is wasting time, and I think the public has a right to the information that we’re entitled to have. They’re not getting that by the trickery that we’re seeing here, and I do not support the amendment, nor the motion.



**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Leone. Again on the amendment for removal, Mr. Fedeli.

**Mr. Victor Fedeli:** Thank you, Chair. I appreciate the fact that that is indeed ruled out of order, considering the fact, as they have been told, as the Liberal Party has been told, it's ruled out of order because it was the government, the Liberal government, that cancelled the gas plants. They continue to want to play these games and have this charade of, "What if?" "What if you did? What if you did?"

Again, as I said in the Legislature this morning to the Premier, to the House leader and to our fellow members, it's more about what is. What is being hidden from the public? What is it that we're seeing covered up by the Liberal Party? What is in the secret documents? What is in the documents that we have not received yet?

We've made it very clear that there are four sets of documents we have not received, the first being the documents that were redacted and pages that were whited out.

The second was the fact that there was no correspondence from the Premier—in all of the 56,600 documents, not one piece of correspondence from the Premier's office.

The third fact is that we've seen answers to letters, you know, "Fred, let me comment on your email about Project Vapour," but Fred's email was not in the documents. So we know those are hidden from us.

The fourth is the fact that the Ontario Power Authority, in their presentation a week ago Thursday in the media room, said, "We took a little while because we needed to pull out the documents that were privileged and the documents that were of a personal nature." Well, I'm sorry, Chair: There is no privilege and there are no personal documents that can be taken out. The order is very accurate.

So to the point here of another charade, another delay, another game that's being played, a game of "What if," let's get down to what is, what is in those secret documents that we haven't seen yet, and I'm very pleased that that is ruled out of order.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli. Again, we're speaking on the amendment to the motion regarding removal of paragraph 2. I would just respectfully remind all of my colleagues to observe parliamentary language.

Mr. Yakabuski.

**Mr. John Yakabuski:** Thank you very much, Chair. The reason, as I understand, as you articulated, that this motion was ruled out of order as it was originally tabled was because of paragraph 2, and paragraph 2 basically, for the record, tries to imply that the Progressive Conservative Party and the New Democratic Party are somehow culpable in this scandal.

What has been clear from the start is that it is the Liberal Party, and the Liberal Party alone, acting as the government, that approved and contracted for these two power plants to be built. It is the Liberal Party, and the Liberal Party alone, who made the decision to cancel the

Mississauga power plant. The Liberal government alone made the decision to cancel the Oakville power plant and then had to deal with the costs of that cancellation.

1650

What the people in Ontario want to know, and why this committee in good faith was struck—and when we get a motion like this at the eleventh hour, as my colleague from Cambridge says, you really question whether the government is acting in good faith. We get this motion—it is more red herrings.

What the people in Ontario want to know: What led to the decisions to approve, cancel and relocate the power plants in Oakville and Mississauga? Who's responsible for them, and how much is it going to cost them? That's what the witnesses are about, that's what this committee's about and that's what we should be trying to get to the bottom of.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Yakabuski. Once again, for the committee's information, what's being deliberated upon is: The motion, presented by Mr. Delaney originally, has been removed—withdrawn. It has been resubmitted, re-moved again, minus paragraph 2. That's what we're discussing right now.

Mr. Tabuns?

**Mr. Peter Tabuns:** The motion as presented was a smokescreen, was an embarrassment. I've been through filibusters; I've been through the process of holding back information. I am not happy to go through it again.

I'm going to call for the defeat of this motion. When we need information, we'll bring forward motions to get that information. This particular gambit—this particular game—was not appreciated today by anyone.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns. Are there any further comments? Mr. Delaney?

**Mr. Bob Delaney:** Chair, I'd like to ask the Clerk, just for the record, for an explanation as to why paragraph 2 was out of order.

**The Chair (Mr. Shafiq Qaadri):** As I understand it, Mr. Delaney, this particular paragraph is outside the mandate of the committee because, with reference to the particular parties—the three so named—it is not within their scope, their power, their mandate to cancel the Oakville or Mississauga power plants. That is an act of government.

**Mr. Bob Delaney:** Thank you very much, Chair. We're ready for the vote.

**The Chair (Mr. Shafiq Qaadri):** Are we now ready to proceed to the vote?

**Mr. Peter Tabuns:** Yes.

**The Chair (Mr. Shafiq Qaadri):** Those in favour, once again, of the motion minus paragraph 2? Those in favour? Those opposed? This motion is defeated.

Is there any further business for the committee? Mr. Leone?

**Mr. Rob Leone:** Mr. Chair, I think that we would like to establish a few things today. In particular, we would like to talk about the kinds of witnesses we'd like to bring forward to this committee. I'm hoping that we can come to an agreement at least on an initial set—that we



can start deliberating on these matters as soon as possible. I would hope that we could entertain a discussion on at least calling up some witnesses today—even though it might not be our full list, that we at least start putting forward some names so that we can contact them and start the deliberations in due course. So that's what I would suggest that this committee undertake at this time.

**The Chair (Mr. Shafiq Qaadri):** Mr. Leone, as you've just heard, is presenting a witness list. Do you have a list, Mr. Leone, to submit to us?

**Mr. Rob Leone:** I do have a list. I would perhaps like to offer some names of some folks that we'd initially like to start with, with respect to the deliberations. I don't know if you want me to—

**The Chair (Mr. Shafiq Qaadri):** You're welcome to do it verbally or in writing, or both.

**Mr. Rob Leone:** I would like to, Mr. Chair, call upon this committee to ask to be witnesses before it three procedural experts, and those procedural experts are the Honourable Peter Milliken, the former Speaker of the House of Commons; Dr. Ned Franks, a parliamentary expert from Queen's University; and Mr. Rob Walsh, a parliamentary expert and former law clerk for the House of Commons.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Leone. Comments? Mr. Tabuns?

**Mr. Peter Tabuns:** We're interested in putting forward the names of witnesses as well. When we've gone through witnesses, I intend to put forward a motion about the schedule of hearings.

I'd like to say to my colleagues at this table: The experience of the Ornge inquiry was that if you give 50 names, it is very difficult to ensure that your highest-priority people are brought forward. So my suggestion to all involved is, we start off with different sections of names. Mr. Leone has done that just now with three witnesses.

I would like to suggest five witnesses as our first round: Mr. Bruce Sharp, who is an energy analyst; JoAnne Butler, vice-president, electricity resources, Ontario Power Authority; Jamison Steeve, former principal secretary; Jesse Kulendran, of the Ministry of Energy; and Serge Imbrogno, who is the deputy minister at energy currently.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns. If you have those names in writing, that would be welcomed.

**Mr. Peter Tabuns:** I do.

**The Chair (Mr. Shafiq Qaadri):** Any further comments? Mr. Delaney.

**Mr. Bob Delaney:** Chair, pending receipt of the list of names, I request a brief recess.

**The Chair (Mr. Shafiq Qaadri):** A brief recess—yes, Mr. Bisson?

**Mr. Gilles Bisson:** I understand that every member is entitled to call for recess, but I fail to understand calling recess on providing names, as something that you have to vet, because it's up to the individual caucus to put names

forward. Unless you want time to go get your names, which I understand.

**Mr. Bob Delaney:** Chair, in addition to providing some names ourselves, we would simply like to have a look at the list of names. I didn't get them all down; I'd like to just have them transcribed. I'm not asking for a lot of time.

**Mr. Gilles Bisson:** No, no.

**The Chair (Mr. Shafiq Qaadri):** You're entitled to use your recess as you so wish.

Committee is now recessed 10 minutes.

*The committee recessed from 1656 to 1708.*

**The Chair (Mr. Shafiq Qaadri):** Colleagues, thank you once again for your patience and indulgence. We're reconvening the Standing Committee on Justice Policy.

We'll now move to the stage of advising witnesses—I'd just inform the members of the committee that according to the House, the only thing that has formally been decided is that each party will have the same number of witnesses. So, 20, 30, 40 etc.—whatever the number is, that has not been decided. Also, when the witnesses are called forward, they will be called forward in rotation, meaning, we won't do all 50 of one group and then another 50. There will be a rotation.

So far, the NDP has submitted five names, and if other parties are also willing to submit five names, then we can get moving. If you want to submit more, you're welcome to do so.

Monsieur Bisson.

**Mr. Gilles Bisson:** Chair, do you have the motion of the House handy, by any chance? If you would read to us the section that is relevant—I think it's the last paragraph at the bottom of the first page.

**The Chair (Mr. Shafiq Qaadri):** You can determine, Monsieur Bisson, if this is it: "That, pursuant to standing order 110(b), where the committee exercises its authority to send for persons, each party shall be entitled to an equal number of witnesses...." and so on.

**Mr. Gilles Bisson:** That's right.

So you're entitled to an equal amount of witnesses, but it's up to the caucuses if they want to call any witnesses, to be clear.

**The Chair (Mr. Shafiq Qaadri):** Understood.

**Mr. Gilles Bisson:** Just because one caucus has asked for five, the other caucus says, "I only want two"—that's up to that caucus.

**The Chair (Mr. Shafiq Qaadri):** I think we'd adopt that, yes. Thank you, Monsieur Bisson.

Any further comments? Monsieur Tabuns then Monsieur Yakabuski.

**Mr. Peter Tabuns:** Yes, there is further comment. It may be that the Liberal Party has a suggestion now of witnesses they would like to bring forward. Mr. Chair, in order to advance the business of the committee, after we've heard that, after each of us has presented our initial list of witnesses, my suggestion is that we go back into subcommittee to sort out schedule, witness time etc.—more of the clerical function.

**The Chair (Mr. Shafiq Qaadri):** I think that's admirable advice, Monsieur Tabuns, because obviously details, scheduling and timing etc. will need to be dealt with in subcommittee.

Mr. Yakabuski, then Mr. Leone?

**Mr. John Yakabuski:** Yes, thank you, Chair. In view of the fact that we've had the discussion with our neighbours to our left here, we would like to add two witnesses to our list to make it a list of five.

**The Chair (Mr. Shafiq Qaadri):** Please, go ahead.

**Mr. John Yakabuski:** Chris Bentley, former Minister of Energy, and Peter Wallace, the secretary of cabinet.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Yakabuski.

Mr. Leone?

**Mr. Rob Leone:** Mr. Chair, given the advice that Mr. Tabuns has provided us, I do want to ensure that we can begin our investigation with witnesses on Thursday morning, and so I would propose that, at the very least, we start with our witness lists and that we meet from 8:30 to 10:15 on Thursday for the purpose of interviewing our first witness.

**The Chair (Mr. Shafiq Qaadri):** Is that a formal motion, Mr. Leone?

**Mr. Rob Leone:** Yes, it is.

**The Chair (Mr. Shafiq Qaadri):** Would you like to move that?

**Mr. Rob Leone:** Just so we're clear, the reason why I'm making the motion is to ensure that we start on Thursday with at least one witness. I'm not clear, and I would seek the advice of the Clerk and the Chair, that if we move to subcommittee this evening, as per Mr. Tabuns's report, would we be able to, on Thursday morning at 8:30 or 9 or whatever we decided in subcommittee, meet with our first witness? Would that be possible to do, in the absence of what I've just said?

**The Chair (Mr. Shafiq Qaadri):** Maybe. It's up to the subcommittee: the availability of witnesses, subcommittee decisions etc.

**Mr. Rob Leone:** So we could, in the absence of what I've just said and the motion that I've moved, potentially have a witness for Tuesday morning—

**Mr. Peter Tabuns:** Thursday morning.

**Mr. Rob Leone:** Thursday morning, sorry; thank you for the correction. If that's the case, I will withdraw what I have just moved.

**Mr. Peter Tabuns:** Fine. Just so we're clear, in subcommittee we can actually set schedules and get the wheels in motion.

**The Chair (Mr. Shafiq Qaadri):** I think the level of detail that we're going into requires subcommittee deliberation. So far, we have five witnesses presented by the NDP, five witnesses by the Conservative caucus. It is up to the government side whether they'd like to or not at this moment; that is their decision. Or they can submit it later in writing, as you wish; or a corridor consultation even.

**Mr. Bob Delaney:** We are very interested in hearing from the three proposed PC witnesses. I earlier men-

tioned to Mr. Tabuns, as they're procedural in nature, and what they say and what advice they provide to us may have some bearing on how we deal with the witnesses that are more substantive in nature.

If Mr. Leone would be willing to entertain it, what I had proposed to Mr. Tabuns is, let's hear them, and that gives us adequate time to meet in subcommittee; it allows you to have what you want, which is to get going on Thursday. I have no objection to hearing Mr. Milliken, whom I only know by reputation; I've never met the man, and I don't know the other two. But if they're going to talk to us about procedure, frankly, I'm very interested in that. It would allow subcommittee to meet to work on the scheduling and for the government to provide its witness list as well.

What we are asked to do here is basically to make up a witness list on the fly, and I'm not sure that's very wise.

**The Chair (Mr. Shafiq Qaadri):** All right. So just to be clear, Mr. Delaney is suggesting that we go ahead with the three procedural expert witnesses that were proposed by Mr. Leone. That, again, is entirely the committee's decision.

Mr. Fedeli?

**Mr. Victor Fedeli:** Thank you, Chair. I think the question that both Mr. Leone and Mr. Tabuns were trying to get at is, once the subcommittee meets this evening and has a procedural discussion and an agreement or not, what mechanism is in place to allow witnesses on Thursday? That is to say, there's no vote that approves the subcommittee's meeting. So can we still proceed Thursday? Is that not what we're trying to get at? It's a technical question.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** What we could do is, I'll draft up a subcommittee report and we could even move the subcommittee report Thursday morning, prior to hearing the witness, and if the committee adopts it, then the witness can come forward and speak to the committee.

**Mr. Victor Fedeli:** But in the interim, the witnesses are still invited for Thursday morning, at whatever time?

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Yes, we could do that.

**Mr. Victor Fedeli:** Thank you. I'm fine, Chair.

**Mr. Peter Tabuns:** So we're clear on that business.

**Mr. Bob Delaney:** Could you, just for clarity—would the Clerk just please encapsulate that for me? I'm just trying to understand what we're being asked to do here.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** My understanding, and correct me if I'm wrong—or maybe, Mr. Tabuns, did you want to explain?

**Mr. Peter Tabuns:** I am going to move that, once you have put forward your names—or not—of witnesses, this committee adjourn, that the subcommittee commence hearing within the next few minutes, and that we settle the outstanding organizational questions so that we can continue hearings at 8:30 on Thursday morning.

**The Chair (Mr. Shafiq Qaadri):** Monsieur Bisson.

**Mr. Gilles Bisson:** The easiest way to do that is that the committee reconvenes after the subcommittee has



met—later on, sometime today, whenever that is—so that everything is done procedurally to allow you to do what you've got to do.

**The Chair (Mr. Shafiq Qaadri):** Mr. Delaney.

**Mr. Bob Delaney:** Can I hear that motion actually read by the Clerk, please?

**The Clerk of the Committee (Ms. Tamara Pomanski):** I didn't take it down. We can get it in writing.

*Interjections.*

**The Clerk of the Committee (Ms. Tamara Pomanski):** If we can get it in writing, Mr. Tabuns—

**Mr. Bob Delaney:** I understand. All of us here are trying, at this early stage, to get this process under way. All I'm asking here is, prior to voting on a motion that I think I understand and, if I understand it correctly, I don't have a problem with, can I just see what it is that I'm being asked to vote for?

**The Chair (Mr. Shafiq Qaadri):** Yes, Mr. Delaney, I think you are absolutely entitled to have it in writing before you vote.

**Mr. Bob Delaney:** It doesn't have to be typed up. The Clerk's handwriting is nice and clear.

**The Chair (Mr. Shafiq Qaadri):** I would respectfully request that I think we will require yet another recess, unless there's anyone—Monsieur Bisson?

**Mr. Gilles Bisson:** What I'm suggesting is, I'm sure that Mr. Tabuns is currently writing out the motion as I speak, but it's a pretty simple concept: The committee is going to adjourn into subcommittee. The subcommittee is going to deal with the matters that it has to deal with so that we can order up whatever we want procedurally as far as when we're going to meet, what time we're going to meet, all that stuff. Then the idea is that the committee re-meets immediately after and moves the motion here in committee. Done, fini; we don't have to wait for Thursday morning to deal with the procedural stuff. It allows the Clerk to go out and invite the witness and do what has to be done, and, lickety-split, we're all done for Thursday morning.

**The Chair (Mr. Shafiq Qaadri):** I appreciate your simplicity, Monsieur Bisson.

I would invite Mr. Tabuns to finish writing. If members are willing to have it read as opposed to in writing, then we can proceed. Otherwise, we need to recess for the photocopying and distribution.

**Mr. Rob Leone:** Five minutes?

**The Chair (Mr. Shafiq Qaadri):** I think we'll need to recess. Monsieur Bisson, yes?

*Interjection.*

**The Chair (Mr. Shafiq Qaadri):** Let's call it 10 minutes, gentlemen, ladies.

*The committee recessed from 1718 to 1726.*

**The Chair (Mr. Shafiq Qaadri):** Thank you, colleagues. We have a motion presented by Mr. Tabuns. I think all of us are admiring the font in which it's presented. I'd just invite you, Mr. Tabuns, to please read the motion as now written.

**Mr. Peter Tabuns:** I move that the justice committee adjourn;

That the subcommittee immediately reconvene to address organizational matters; and

That the justice committee immediately reconvene after the subcommittee adjourns.

**The Chair (Mr. Shafiq Qaadri):** This is a debatable motion. Is there any debate or comment?

All in favour? All opposed? The motion carries.

The justice committee is now adjourned and the subcommittee is now in force.

*The committee recessed from 1727 to 1807.*

## SUBCOMMITTEE REPORT

**The Chair (Mr. Shafiq Qaadri):** Thank you, committee members. I think at the outset I'd just like to compliment our Clerk, Ms. Pomanski—

*Applause.*

**The Clerk of the Committee (Ms. Tamara Pomanski):** Thank you.

**The Chair (Mr. Shafiq Qaadri):** —for instantaneously executing a subcommittee report with, as yet, undetectable errors—although I still, as I say, prefer Mr. Tabuns's font.

But in any case, I'd invite somebody to please move forward the subcommittee report.

**Mr. Peter Tabuns:** I so move.

**The Chair (Mr. Shafiq Qaadri):** Well, Mr. Leone gets the floor, unless he wishes to yield it.

**Mr. Rob Leone:** Dibs.

I move the adoption of the subcommittee report.

**The Chair (Mr. Shafiq Qaadri):** You need to read it.

**Mr. Rob Leone:** Oh, I have to read it all?

I move the adoption of the subcommittee report, which states as follows:

Your subcommittee on committee business met on Tuesday, March 5, 2013, to consider the method of proceeding on the orders of the House dated February 20, 2013, and March 5, 2013.

(1) That the Standing Committee on Justice Policy meet Tuesdays from 8:30 a.m. to 10:15 a.m. and 3 p.m. to 6 p.m., and on Thursdays from 8:30 a.m. to 10:15 a.m., while the House is in session.

(2) That all witnesses be limited to five minutes for their opening statement and 90 minutes for questioning from committee members.

(3) That witnesses be scheduled in rounds starting with the official opposition, followed by the third party and the government from prioritized lists provided to the Clerk of the committee by each caucus.

(4) That witnesses may be recalled on approval of the subcommittee.

(5) That the Clerk of the committee schedule an extra witness per each meeting time to present to the committee, should time permit.

(6) That the Clerk of the committee, in consultation with the Chair, be authorized to commence making any preliminary arrangements necessary to facilitate the committee's proceedings prior to the adoption of this report.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Leone, for moving the subcommittee report.

Are there any discussion points before adoption? Mr. Delaney.

**Mr. Bob Delaney:** Just before adoption, is it necessary, in the view of the other members, that we confirm in writing what happens if a witness doesn't show up?

**Mr. Gilles Bisson:** Chair?

**The Chair (Mr. Shafiq Qaadri):** Mr. Bisson?

**Mr. Gilles Bisson:** It's pretty clear that point 5 deals with that, so it's understood that the first witness will be invited along with the second, and the second one is essentially a standby in case the other witness doesn't use—

**Mr. Bob Delaney:** Okay. I'm on that page.

**Mr. Gilles Bisson:** It's pretty clear.

**The Chair (Mr. Shafiq Qaadri):** Thank you. Any further issues on the subcommittee report before adoption?

**Mr. Peter Sibenik:** Just a point of clarification, Chair. Point 1, "while the House is in session": Technically, a session is from the date of the throne speech until prorogation. So you don't consider next week, for example, to be the House in session, if you understand what I mean. When the House is actually meeting—

**The Chair (Mr. Shafiq Qaadri):** Sessional days.

**Mr. Sibenik:** —a day on which the House is actually meeting. That's what you mean by "is in session." Do I understand you correctly there?

**The Chair (Mr. Shafiq Qaadri):** Yes, you do.

**Mr. Peter Tabuns:** While the House is sitting.

**Mr. Bob Delaney:** I think we're familiar enough with the language "sessional day" that we understand the intent of the language.

**The Chair (Mr. Shafiq Qaadri):** So, understood. Mr. Bisson.

**Mr. Gilles Bisson:** Just for the record, there may be a change to the schedule at one point if things are determined, right? Let's be clear.

**The Chair (Mr. Shafiq Qaadri):** Sure.

All those in favour of the subcommittee report, as read? Those opposed? The subcommittee report carries.

The last order of business: As other parties have provided lists of five witnesses, I have been provided a list of five from the government side, and they are: (1) Jim Hinds, chair of OPA; (2) Rob Burton, mayor of Oakville; (3) Frank Clegg, Oakville citizens committee; (4) Hazel McCallion, mayor of Mississauga; and (5) Greg Rohn, president of the Coalition of the Homeowners for Intelligent Power.

Is there any further business before this committee? Monsieur Tabuns.

**Mr. Peter Tabuns:** For clarity, we're reconvening at 8:30 this Thursday, correct?

**The Chair (Mr. Shafiq Qaadri):** Yes.

The committee is now adjourned until 8:30 a.m., Thursday.

*The committee adjourned at 1811.*





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### STANDING COMMITTEE ON JUSTICE POLICY

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Mrs. Laura Albanese (York South–Weston / York-Sud–Weston L)

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Mr. Taras Natyshak (Essex ND)

Mr. Peter Tabuns (Toronto–Danforth ND)

Mr. John Yakabuski (Renfrew–Nipissing–Pembroke PC)

#### Also taking part / Autres participants et participantes

Mr. Gilles Bisson (Timmins–James Bay / Timmins–Baie James ND)

#### Clerk / Greffière

Ms. Tamera Pomanski

#### Staff / Personnel

Ms. Karen Hindle, research officer,

Legislative Research Service

Mr. Peter Sibenik, procedural clerk,

Journals and Procedural Research Branch



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## Legislative Assembly of Ontario

Second Session, 40<sup>th</sup> Parliament

# Official Report of Debates (Hansard)

Thursday 7 March 2013

Standing Committee on  
Justice Policy

Members' privileges

## Assemblée législative de l'Ontario

Deuxième session, 40<sup>e</sup> législature

# Journal des débats (Hansard)

Jeudi 7 mars 2013

Comité permanent  
de la justice

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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE POLICYCOMITÉ PERMANENT  
DE LA JUSTICE

Thursday 7 March 2013

Jeudi 7 mars 2013

*The committee met at 0830 in room 151.*

## MEMBERS' PRIVILEGES

**The Chair (Mr. Shafiq Qaadri):** Chers collègues, j'appelle à l'ordre cette séance du Comité permanent de la justice.

Ladies and gentlemen, and colleagues, I call to order this meeting of the justice policy committee. There are a number of smaller items to go through before we invite our first witness to come before the committee.

To begin with, I'd like to just apprise the committee of the motion enabling the expanded scope. I've been advised to read this into the record, which I will now do. This was passed Tuesday, March 5, 2013, and it reads as follows:

"With unanimous consent,

"On motion by Mr. Milloy,

"Ordered, that, pursuant to standing order 110(a), the Standing Committee on Justice Policy shall be authorized to consider and report its observations and recommendations concerning the tendering, planning, commissioning, cancellation and relocation of the Mississauga and Oakville gas plants;

"That the committee be authorized to consider all documents filed with the Clerk of the Legislative Assembly by the Minister of Energy, the Ministry of Energy and the Ontario Power Authority on September 24 and October 12, 2012, and February 21, 2013, and that such documents be deemed to have been ordered by that committee;

"That, notwithstanding standing order 108(h), the committee be authorized to consider any report prepared by the Auditor General with respect to the cancellation and relocation of the Mississauga and Oakville gas plants;

"That, pursuant to standing order 110(b), where the committee exercises its authority to send for persons, each party shall be entitled to an equal number of witnesses;

"That these terms of reference shall be incorporated into the terms of reference for the Standing Committee on Justice Policy adopted by the House on February 20, 2013."

Again, to summarize, that was the enabling motion for the expansion of scope.

I'd also bring to the committee's attention a gesture of extraordinary modernity: the 16-gigabyte, 56,000 docu-

ments, which are now in the possession of each member of the committee—which you have—so that you may read and parse at your leisure.

HON. PETER MILLIKEN, PC

**The Chair (Mr. Shafiq Qaadri):** Nous sommes honorés aujourd'hui d'accueillir l'ancien président de l'Assemblée du Parlement du Canada.

We are honoured to welcome Mr. Peter Milliken, the former member for Kingston and the Islands who served the Legislature in Ottawa for 23 years and also holds the distinction of being the longest-serving Speaker in the history of Canada. We're honoured, and I'm sure we'll all be beneficiaries of your insight and wisdom, Mr. Milliken.

To begin with, I would just invite you—as is protocol for all of our witnesses—to swear an oath, which I would now invite our Clerk to administer.

**The Clerk of the Committee (Ms. Tamara Pomanski):** Do you solemnly swear that the evidence you shall give to this committee, touching the subject of the present inquiry, shall be the truth, the whole truth and nothing but the truth, so help you God?

**Hon. Peter Milliken, PC:** I do.

**The Clerk of the Committee (Ms. Tamara Pomanski):** Thank you.

**The Chair (Mr. Shafiq Qaadri):** Also, to remind all members of the committee and those interested parties watching and listening, Mr. Milliken, you will have 95 minutes in which to give your address; five minutes is the actual address, and it'll be 30, 30, 30 for the committee members to ask questions, divided as they understand—I understand that we're going to do 20, 20, 20; 10, 10, 10. All right?

Mr. Milliken, I respectfully invite you to please begin now.

**Hon. Peter Milliken, PC:** Thank you very much, Mr. Chairman. It's a privilege and pleasure for me to be invited to be here. I can't say that I know a lot about the subject of this matter—certainly I read a little bit in the media when the issue first arose, but not a lot. The Clerk kindly sent me some documents yesterday on a computer, which I haven't had an opportunity to read, because I was travelling up here anyway, last evening, for an event in Toronto. Fortunately this worked in terms of time, but I haven't had much opportunity to look at the material. So,

really, I'd be glad to answer the questions that the members of the committee have to pose as best I can.

I have certainly seen something of the Speaker's rulings on this subject in the Legislature in the material that was sent to me, but not much more than that. So I'm afraid I may be at a bit of a disadvantage in terms of being of assistance to you, but if I can be, I'd be more than happy to answer the questions that honourable members propose.

I want to say, it's a pleasure to be back here. It's been some years since I paid an official visit and enjoyed very much meeting with the then Speaker. I hope things are going well in the Legislature now. Minority Legislatures are always fun from all perspectives, I guess. So, thank you for inviting me.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Milliken. That's precisely how we characterize it, too, yes.

We now move the speaking opportunity to the honourable opposition. Gentlemen, you have 20 minutes in which to make your opening comments, and you're welcome to start now, please.

**Mr. Rob Leone:** Thank you, Mr. Milliken, for taking the time to visit us on short notice. We acknowledge that you haven't had a lot of time to prepare yourself since you probably had a day's notice to come here, but we do recognize you to be one of, if not the leading expert in parliamentary privilege, and we've noted in this committee and in previous committees some of the decisions that you rendered as Speaker of the House of Commons with respect to matters that touch upon what we're going to do today. Even though the subject matter of energy and gas plant locations may not have been the subject of what you were dealing with in terms of Afghan detainees and other things, we would like to ask you some questions related to privilege and the privileges held by members of the Legislature with respect to their right to seek documents.

My first question, sir, is essentially that: When a committee of the Legislature asks for documents, are there any limits to that request that essentially you could list for this committee?

**Hon. Peter Milliken, PC:** Well, as I've stated on previous occasions in rulings on this subject, technically, the committee can demand what it wants, as can the Legislature. In my view, the Legislature has the privilege of claiming any documents it wants to see and having them produced.

However, as I stated in my ruling in the Afghan one, I believe was where that occurred: Generally, the Legislatures—at least the Parliament of Canada and the House of Commons—have not persisted in demanding something where the release of a document of a certain type would result in damage to national security. In other words, the members try to act as responsible citizens in respect of that and ensure that by having something produced, they're not placing the security of our country in jeopardy by making information public that in the hands of some other individual or individuals could be very

damaging to our country. That was part of the argument that was advanced in the Afghan case and one that I dealt with in the ruling. So there are limits at least in terms of security.

I've not dealt with a case that I recall that involved one of privilege. I don't mean parliamentary privilege; I mean solicitor-client privilege or something like that where documents were being demanded that involved a lawyer and his or her client. I don't recall dealing with such a case. But, again, the committees can work in a way that they can demand production of documents that are produced for the benefit of the members of the committee to see—not to be made public but just for them to look at.

There are various ways this can be dealt with that I think Legislatures could do in terms of their demands for production, seeing things and not making them public. The understanding is that they'd not be photocopied or put on a website or anything like that.

**Mr. Rob Leone:** So, Mr. Milliken, we as a committee, in the estimates committee of this Legislature, requested documents last May related to the cancellation of the Oakville and Mississauga gas plants. We were denied those documents in a letter from the OPA and the Minister of Energy at the time with respect to the release of those documents. They cited basically three arguments. The first argument was solicitor-client privilege, as you noted. They also cited commercial sensitivity, and they also cited sub judice as reasons.

**0840**

In your mind, would there have been a possibility for those documents to be released, perhaps in a different way, to allow us actually to view those documents and ask questions pertaining to them?

**Hon. Peter Milliken, PC:** It's hard to say. Without having seen them, it's difficult to say that. I faced the same difficulty in respect to the Afghan situation because, of course, I had not seen the documents and didn't know what was in there. There were just the arguments on both sides as to what should be the right way to proceed.

So it's hard to answer that question, not knowing what the contents were and not knowing what the litigation matters were or anything about the case from that perspective. Clearly, if there's litigation ongoing, and the release of the documents was going to be harmful to the case of one side or the other in the litigation, or benefit one side at the expense of the other or something like that, there may be arguments for not making the documents public.

The question is, is the demand for the production making them public? It's one of the issues that was there with the Afghan documentation, and one that—as you know, there was a deal made finally between the parties to review the documents and decide what should be made public.

**Mr. Rob Leone:** So essentially we could have viewed—or in the Afghan detainee case, they did view the documents in question. In camera? Without—



**Hon. Peter Milliken, PC:** No. What happened in that case, and I don't know whether it has ever been resolved—I've never heard that it was, but they might not have told me. Maybe it has, maybe it has not; I do not know. But the deal was made that there would be a panel of members of Parliament—one from each party, except one party which refused to participate—that would sit and look at the documents and recommend whether they be made public or not. If the recommendation was not unanimous, then the documents were sent to a panel of judges who were to examine the documents and then decide whether they would be made public or not. I have not heard whether they have ever been made public. I'm not sure that they have.

**Mr. Rob Leone:** Okay. We have some documents that we'd like to circulate, some specific ones. Is that possible to do in this committee?

With respect to the matter at hand—the question, Mr. Milliken, is with respect to redactions, blacked-out, whited-out portions. We've seen in the course of the release of documents that there are whited-out portions, redactions; there are missing gaps with respect to timelines. We still do not have a great deal of communication from interaction between the Ministry of Energy and the OPA and the government and cabinet, and documents relating to those issues have not been forthcoming. Do you have a copy of what we just sent?

*Interjections.*

**Mr. John Yakabuski:** Yes.

**Mr. Rob Leone:** So, if you look through the documents, Mr. Milliken, we can go through and see clearly that parts have been whited-out, that we don't have—if you go to, I guess, the document isn't clearly numbered, but page 5, clearly the documents and the contents of those documents from a person named Nimi Visram have been totally whited-out and blacked-out.

We feel, as a committee, that we still do not have all the documents that we've requested. In your mind, and in your opinion, how is a committee of the Legislature able to do its work when we do not have the information before us to properly hold the government to account? And what is the right of the opposition to this information, given the fact that we don't know what the contents of this information really are? If we continue down, you can see clearly more redactions, more intentionally deleted parts of the release of information that we clearly still do not have at our disposal.

What is the right of the opposition, essentially, to this—sorry, the right of Parliament and a legislative committee and the Legislature itself to actually have that information?

**Hon. Peter Milliken, PC:** Well, as I said, I've not studied the issue of privilege in terms of solicitor-client privilege and that sort of issue, so I'm not able to answer specifically in respect of a document of this kind. I have no idea, of course, what has been deleted—none of us do—so it's hard to say whether this was taken out because of some claim that the material was private, that it

belonged to a certain individual and because litigation was involved, it could not be made public.

As I say, a deal was reached in respect of this issue by the parties after my ruling on the Afghan issue that allowed for a method of reviewing these documents and deciding what in the documents should be made public and what not. And it could be edited, I assume. I assume they could agree that certain paragraphs could be deleted and the rest of the document made public, but I wasn't part of the panel; I have no idea. But they could have done that, and I don't think there would have been any difficulty with it. The difficulty was getting through the pile, because I understand it was a huge number of documents, and it would have taken them quite a long time to go through it.

It's hard for me to say, in terms of what the Legislature's practice has been, not being familiar with it, as to whether solicitor-client privilege is something that the Legislature has recognized as a privilege that they would not trample on in exercising their authority to demand the production of documents. I'm just not aware of the practice in that field of documentation demand, either nationally or on a provincial level. I just don't know what has happened in the past.

Technically, as I say, I'm sure the Legislature could demand production, but again, whether they would want to, where there is a solicitor-client privilege that may result in damage to one of the parties, is another matter. It's just a matter of discussion and trying to find out what's going on.

I think it's fair to ask some witness what happened to this document and why it was taken out, and if that is in fact the reason. It may be that somebody will want to take a look. Maybe the procedural clerk can examine the matter and decide whether or not it constitutes solicitor-client privilege or something. There are other ways of doing it is all I'm saying.

**Mr. Rob Leone:** Right. So, Mr. Milliken, we were told as a committee in estimates that the reason why these weren't released was because the government was upholding the public interest, which I patently reject because as members of the Legislature, we're all entitled to uphold the public interest. Is that a justification, in your mind, for not releasing documents, because one person in this Legislature has command of what exactly is the public interest?

**Hon. Peter Milliken, PC:** It's a novel argument. I think, as I say, the Legislature has the right to demand production, and I'm not sure that the public interest is the overriding concern; it strikes me as a bit general. I think it needs to be a little more specific in terms of either solicitor-client privilege or something to do with security or some issue that's very important for the people in the province, rather than this straight public interest.

**The Chair (Mr. Shafiq Qaadri):** Mr. Yakabuski.

**Mr. John Yakabuski:** Thank you very much, Mr. Milliken. It's always a pleasure to welcome a seasonal resident of mine to our committee here.



Just on that issue of redaction or nondisclosure based on solicitor-client privilege and/or matters of the public interest, it would seem that that could be a very convenient way of not responding or not complying with an order of a committee if that was given too much breadth and the ability to use it.

I just want to read a quote of yours, if I may. It was in your finance committee ruling on March 9, 2011, on the issue of tabling complete documents: "While the Chair does not judge the quality of documents tabled in the House, it is clear from a cursory examination of the material tabled that, on its face, it does not provide all the information ordered by the committee."

If you can expand on where you were going with that: If it's not giving all the information ordered by the committee, then they would be directed to provide all the information ordered by the committee? Because that seems to be part of the problem here, that many, many documents had significant portions removed, and in every case, or almost every case—because there are thousands of documents and thousands that had portions removed or the entire document removed other than the title, the subject matter; if that's the case, where do we have the ability to get that information, or should the committee have the ability? You need to justify in each and every case, where is the issue of solicitor-client privilege and/or the public interest—otherwise, that document, in your view, should it not have been disclosed?

0850

**Hon. Peter Milliken, PC:** Right. Well, it's a matter of calling the witness, I guess—the person who tabled them or persons working for that individual who edited or changed the documents in some respect—and asking on what basis this change was made.

In fairness, as I ruled in the Afghan issue, I think it's fair to have somebody look at this, or some small group look at it, in confidence. The deal that was made was that these people were all sworn to secrecy. They were not to reveal anything they discovered as a result of their work, and they were to review these documents. That was the deal the parties made, and they adopted a resolution in the House, as I recall, that set this small panel up to look at these things. They all were sworn to secrecy; they looked at the materials. That's partly why I've heard absolutely nothing about it. I asked some of the members, "What's going on?" and they said, "We can't say a word. We're sworn to secrecy," and that was that. So I don't know what happened.

But I think there are ways of doing this that will not damage the public interest. If the argument is that making this public is damaging to the public interest, I can see why there might be disagreement among members of the Legislature as to whether this should be made public or not. But if there is a way of looking at the documents and making sure that that is the case, that the one person who wrote the document is the one making the decision and not others, not a more independent body, I can see there might be an argument that maybe that person is biased and thinks that saying this in public would be bad,

whereas some other group that looked at it might say, "That's nonsense. It's not going to hurt anything."

So these arguments are there, and I think it's a tough one. Given the power of the Legislature is to demand production of documents, I can see where their practice has always been one way or another in terms of—I stress national security. I don't know what it is in terms of solicitor-client privilege, but on national security, the practice has always been to make sure that they weren't damaging national security in making these demands, and so they set up this arrangement to examine. I think it could be done in other areas for the same purpose, if it was necessary to do so to protect the public interest, which is, after all, what we're all here for, what all members are here for.

**Mr. John Yakabuski:** So would you say, sir, then, that it would have been reasonable for, we'll just say the government in general—because the documents were requested from the government—for them to have approached the other parties on the committee and said, "Look, we will release all of the documents, unredacted, to a special committee, if you want to call it that, to review them, to see what is and isn't appropriate to be viewed by the public," and treat it in that fashion, as opposed to a massive document dump, with thousands and thousands, literally thousands of documents that were unviewable?

**Hon. Peter Milliken, PC:** They could have done that. I have to say that in my view it's unprecedented. When the House of Commons did it with this recent Afghanistan thing, to my knowledge, it was the first time such a deal had been worked out. It may have been done informally before, but, if so, I was unaware of it.

**Mr. John Yakabuski:** Thank you very much.

**Mr. Rob Leone:** I want to pick up on where Mr. Yakabuski left off there—

**The Chair (Mr. Shafiq Qaadri):** A minute and a half left.

**Mr. Rob Leone:** I'll be very quick.

In the absence of an explanation for why these documents were redacted, would you consider that to be a breach of privilege in terms of what the committee has asked for?

**Hon. Peter Milliken, PC:** I suppose it would be a prima facie breach, because the Legislature does have, I'm sure, the power to demand production of documents. So, having made that demand, I think it's entitled to see the documents. The question is, there's a dispute here as to what parts should be made public in order to protect the public interest, which everyone has an interest in. That's the argument.

**Mr. Rob Leone:** So, in essence, in your view, these actions, without providing that document—I don't have enough time to go through the whole thing, but we started this in May. We were denied—and again, we sat through July to report back to the House. The House received it. I rose on a point of prima facie breach, which the Speaker agreed to, which is why we're basically here. At each given step, we've received documents only after



the eleventh hour that we've actually moved the breach and contempt of the Legislature—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Leone. I need to intervene there and pass the speaking opportunity now to the NDP, to Monsieur Bisson.

**M. Gilles Bisson:** Bonjour, monsieur. Comment ça va?

**L'hon. Peter Milliken, CP:** Ça va bien, merci.

**M. Gilles Bisson:** C'est donc beau de vous voir ici aujourd'hui parmi nous.

**L'hon. Peter Milliken, CP:** Un plaisir pour moi.

**Mr. Gilles Bisson:** So you know the story. I'll just set this up so that we put some context to it. The government decided that they were going to build this particular plant—there was Oakville and Mississauga, but we're speaking of Mississauga particularly. They made the decision to go forward, and the government, as a result of, I guess, political pressure, decided that they wanted to go in an opposite direction and do the cancellation.

My question to you is this: How wise is it for a government to cancel a contract halfway through construction?

**Hon. Peter Milliken, PC:** I have no idea.

**Mr. Gilles Bisson:** You're a very learned person.

**Hon. Peter Milliken, PC:** How much were they going to save? There's all kinds of arguments on that one. I think it would be a matter of vigorous argument on both sides.

**Mr. Gilles Bisson:** What are your thoughts? If you have a contract that's signed to build something and you're halfway through construction, is it wise for a government to cancel such a contract?

**Hon. Peter Milliken, PC:** Well, I guess it depends on whether the thing's going to be useful or productive or generate money or whatever. Those issues are all part of that. I have no idea.

**Mr. Gilles Bisson:** In this particular case, in regard to Mississauga, where they were building a plant to generate electricity—it could have been done there, it could have been done somewhere else, I guess. But the point is, your thoughts in regard to cancelling those contracts—was that wise on their part?

**Hon. Peter Milliken, PC:** I'm sorry; I have no view. I have no idea because I—maybe the shipping costs of the power for Mississauga are greater than sending them from wherever else they were going to do it.

**Mr. Gilles Bisson:** No, no. It's actually going to be more expensive. It'll actually be more expensive the way we're doing it now.

**Hon. Peter Milliken, PC:** I see.

**Mr. Gilles Bisson:** So we're going to ship electricity further, we'll have line losses, which means to say it'll be less efficient and it'll cost us more money.

**Hon. Peter Milliken, PC:** I see.

**Mr. Gilles Bisson:** So, I go back: Is it a wise thing for governments to get in the habit of cancelling contracts halfway through construction? Is it something you would do?

**Hon. Peter Milliken, PC:** Well, I haven't been in government, to that sense. I've never been a minister, so I don't know—

**Mr. Gilles Bisson:** You were in charge of the House of Commons, and the entire precinct was under your jurisdiction. If you would have been halfway through a construction project in the House of Commons, would you have cancelled the contract halfway through construction?

**Hon. Peter Milliken, PC:** We don't run those; the Department of Public Works does. We're merely tenants. It's tough, and I'd certainly have cancelled some of those at the expenses that they were running.

**Mr. Gilles Bisson:** Is it wise to be cancelling contracts halfway through construction?

**Hon. Peter Milliken, PC:** As I say, I don't know. It depends what the—

**Mr. Gilles Bisson:** Okay.

**Hon. Peter Milliken, PC:** If you don't want the project finished, then that makes sense.

**Mr. Gilles Bisson:** Okay. Let me go on to the next one. Clear enough; you don't want to answer that. That's fine.

There is a convention during elections that there is a caretaker provision for government that when the House is in session and prior to a writ or after a writ, whoever is the government enjoys the power of the executive and collectively enjoys the power of the legislative in regard to what we do here at Queen's Park.

There's an understanding within government, as far as the civil service, that a government is not to make decisions that are going to undertake any kind of additional cost to the incoming government. Can you speak to that somewhat?

**Hon. Peter Milliken, PC:** Sorry. The government—

**Mr. Gilles Bisson:** It's called the caretaker provision.

**Hon. Peter Milliken, PC:** Okay.

**Mr. Gilles Bisson:** In the period of a writ the Legislature is dissolved—

**Hon. Peter Milliken, PC:** Right.

**Mr. Gilles Bisson:** —but the executive still remains, because somebody at the end of the day has got to be in charge of the executive. You can't be without an executive for the 27-day period of the campaign. But there's an understanding and there is a convention called the caretaker convention that essentially says that during the period of a writ a government is not supposed, by way of the executive, to make decisions that'll encumber the incoming government with costs that are not fully contemplated by the authorities of the Legislature as far as appropriation of monies. Can you speak to that in any way?

0900

**Hon. Peter Milliken, PC:** I can't claim a lot of familiarity with it. I think I've heard of it before, that a government in between can't make announcements, for example, that—or start; it can make an announcement, but it can't alter policy that might raise tensions during an election campaign or something like that—



**Mr. Gilles Bisson:** Yes.

**Hon. Peter Milliken, PC:** —without legislative authority. It's got to wait until the Legislature meets—

**Mr. Gilles Bisson:** Essentially, so—

**Hon. Peter Milliken, PC:** —or announce its intention to do so when the Legislature comes back, but it can't do it right on the spot. You're right, I think, there.

**Mr. Gilles Bisson:** So one of the key responsibilities a Legislature has, or a legislative body, is to approve the money. The whole basis of our system is, the Legislature approves the money, and then it's up to the executive to spend it. And during the period of the campaign, it is understood during the writ period, the caretaker provision that establishes that governments cannot encumber the future government is one that you can't make decisions that are all of a sudden going to change the fiscal outlook, in one way or another, of the government itself.

Do you think it was wise for a government, in the period of a writ, to actually change the outcomes of what actually would be the financial expenditures of the government in the following year?

**Hon. Peter Milliken, PC:** To change it during the writ? I don't know what you mean by how—they can announce they intend to change it. They could announce that they're planning to spend more money on a certain project than was planned in the following year, but they can't actually spend it.

**Mr. Gilles Bisson:** But it appears from the documents that we've seen so far—and this is part of what this committee will establish—that certain decisions were made during the period of the writ and certain actions were taken by the executive. Is that a good thing to have happen, or is that something that shouldn't have happened? In other words, could a government use its power as the executive to change policies that would cost the government more money as a result of those actions during the period of a writ?

**Hon. Peter Milliken, PC:** I guess it depends on whether the policy is a legislative one or not. Governments can govern and make decisions. They have to; that's why they're there. Even after a writ has been issued and before the Legislature reconvenes, governments have power to make certain decisions. Yes, they need authority to spend more money, so they can't actually spend it, but they can announce they plan to spend it. They can announce changes in policy that they intend to bring in. If a legislative change is necessary, it will be delayed until that happens, but they can announce it, and this does happen. Now, what I'm not clear on—

**Mr. Gilles Bisson:** We all understand that governments and political parties can make announcements during a campaign. I think we've all done that. That's not the issue.

**Hon. Peter Milliken, PC:** No.

**Mr. Gilles Bisson:** That a government cannot use its executive power to effect a change that would effectively change how much money the government is going to—like what they're going to make the new government liable for. It would appear by looking at the documents

that there were documents that were generated during the period of the writ that effectively made decisions that set everything in place, that put everything into motion, as we would say.

I guess what I'm saying is that it seems to me that the caretaker provision would prevent a government from doing that kind of thing. It's one thing to make a political promise; it's quite another thing for a government to use its power of the executive to effect any kinds of changes during the period of the writ.

So my question is: Is it appropriate for a government to use its powers of the executive during the period of the writ that would affect the overall amount of money that the government is going to spend in the following year?

**Hon. Peter Milliken, PC:** Well, if it was going to reduce it, yes, I think they could do that. If they're going to increase it, they've got a problem, because they have to get it passed. So I don't know what you're talking about specifically here.

**Mr. Gilles Bisson:** Okay, fair enough. So you're saying, in your view, that if it's going to increase the cost, it's a problem, and if it's going to decrease it, maybe they get away with it. But, in either case, my understanding of the caretaker convention, an executive can't make a decision other than if there's an emergency; you've got to do something that absolutely—you know, something happens on a highway like we saw in Wawa and you've got to fill the sinkholes, you know, that kind of stuff.

**Hon. Peter Milliken, PC:** I see.

**Mr. Gilles Bisson:** Of course, the government has to do that. But for the other stuff, it is a problem.

Let me get to one other thing. Our Speaker was pretty clear in his decision that sub judice doesn't apply to give any right for people to withhold information.

**Hon. Peter Milliken, PC:** Okay.

**Mr. Gilles Bisson:** Can you speak to that? Because it was pretty clear in our Speaker's ruling.

The government argued at committee that they were not going to release that information because of the sub judice rule, that there was financial information that was in there that was sensitive etc., and there may be some information in there as well that might be used in the courts. Our Speaker was pretty categorical and said sub judice doesn't count; the committee has the right to ask for documents and the fact that this is before the courts or there's some sort of financial transaction going on is no reason to withhold releasing those documents. If you can speak to that?

**Hon. Peter Milliken, PC:** As I say, it's an argument I have not dealt with at the federal level. It was not advanced in any of the arguments that I remember on any question of privilege that came before me when I was there. If the Speaker has made that ruling in Ontario, I'm sure it's correct and based on practice here.

I'm unfamiliar with the issue because I haven't dealt with it, so I have not researched and I didn't in advance of today either, since I got called yesterday. So I haven't had a look at that.



**Mr. Gilles Bisson:** Okay. What is the consequence of non-compliance with a request for documents?

**Hon. Peter Milliken, PC:** Well, it's a matter for the Legislature to decide. It's contempt of the Legislature, so it's a matter for them to make a decision on what the punishment should be to the malefactor.

**Mr. Gilles Bisson:** In regard to your experience in the House, can you give us some examples as to what the consequences were for non-compliance?

**Hon. Peter Milliken, PC:** I must say I'm unfamiliar with it. It's not something I looked at either, in the course of the work. I guess it would be a motion saying the member was wrong and beyond that I'm not sure what more the House can do. I guess technically they could expel the member but the House of Commons has fairly limited powers, I think, in that regard for contempt. There may have been somebody put in prison once for a period of time years ago, but if so, I don't know the details of it—

**Mr. Gilles Bisson:** Okay, fair enough. In your view, when a committee or the House requests information, is it appropriate for the government to restrict the information that is being released?

**Hon. Peter Milliken, PC:** Generally, as I said in my ruling, it's done not because the government wants to restrict it, but the public interest demands that it be restricted, because members of the House don't want to get the country into some difficulty by making public information that's damaging to national security. That was the argument.

I don't think any of the members disagreed with me in making that part of the decision, because the national public interest—national security is part of the national public interest—is something that members would be careful not to want to overstep in their demand. If it turned out that they had demanded certain papers, a single document, for example, and the minister said, “Well, I can't make this public because it contains material that if it was public would damage our country,” I think the members would all agree, “Yes, you're right; we won't make this one public,” and they'd shut up about it.

The difficulty is who gets to see it first and make that kind of arrangement. In the case of the Afghan detainee documents, there had been no review of those documents by anybody except the government, and that's why I think there was a dispute. Whether it's ever been settled, as I say, I don't know.

That's the trick for a Legislature, and it's sometimes difficult because the government—or if it was an opposition member who had the document from a time they were in government before, for example, they might say, “Well, we don't want to make this public because it'll damage the public interest.” You need to get some arrangement between the members to look at the thing and make a decision as to whether that is in fact the case.

**Mr. Gilles Bisson:** But that's in cases of national security, right? That was essentially what you were arguing in that decision.

**Hon. Peter Milliken, PC:** Right, yes

**Mr. Gilles Bisson:** My colleague has a question.

**Mr. Peter Tabuns:** Speaker Milliken, you were asked about the penalties for non-compliance. It seemed clear that not a lot of that has actually come before you.

**Hon. Peter Milliken, PC:** No.

**Mr. Peter Tabuns:** Is it rare, then, for governments to be non-compliant with a request by a Parliament?

**Hon. Peter Milliken, PC:** I presume so. But of course, in a majority Parliament you wouldn't have a request made to the government that the government didn't want, normally.

**Mr. Peter Tabuns:** No, that's true, although you did have the experience of working with minorities over an extended period. So it is a fairly rare thing for a government to not comply.

**Hon. Peter Milliken, PC:** That's my impression, yes. I think it's fairly rare.

**Mr. Peter Tabuns:** And when we are in a situation where governments don't comply with a request of Parliament, what are the implications for parliamentary democracy if a Parliament cannot get the documents that it requests?

**Hon. Peter Milliken, PC:** Well, it's a matter of whether the Parliament has the right to the documents, assuming that that's the case. It's simply a matter of then deciding who's in breach of the rules in respect of this issue.

0910

Parliaments, in my view, do have the power to demand the production of documents. It's a matter of which other arguments might be looked at to decide whether the documents should be in fact made public. I'd say, in my view, there's a difference which I tried to indicate in the ruling between demand for production and making them public. The assumption is that if they're demanded and produced, they're made public, but there could be a system where certain parts are not made public by agreement because it would be damaging to the public interest to make them public.

I think generally, as I said in my ruling, Parliaments have tried to be reasonable in that respect in making demands to make sure they're not damaging national security at least, and there may be other arguments in other areas that would affect their decision-making.

**Mr. Peter Tabuns:** I appreciate that answer. Maybe I should phrase my question more clearly. When Parliament is in a position where it cannot get the documents that allow it to hold a government accountable, what does that mean for parliamentary democracy?

**Hon. Peter Milliken, PC:** Well, there may be other ways of getting it, by asking specific questions and so on. The documents may be helpful or may not be in making sure the answers are accurate or correct or whatever, but generally, I'd say Legislatures and Parliaments have the right to get this information so they can make their decisions properly. The failure to get it is a serious issue, and I think if you look at the historical precedent for the exercise of this privilege going back into the British



House and so on, it obviously was a matter of considerable gravity.

At various times, I think there have been cases, but I don't claim to have researched these. I think I may have read about them when I was young, but haven't for a long time. They indicate that Parliaments do have this quite significant power and can enforce it through various means. It's a matter of how.

**Mr. Gilles Bisson:** A question, two parts; first part: In your decision of the Afghanistan situation, as I remember it, you asked the parties to come to some sort of agreement about how they're able to deal with this.

**Hon. Peter Milliken, PC:** Correct.

**Mr. Gilles Bisson:** My question is, if they had not come to an agreement, what would you have done?

**Hon. Peter Milliken, PC:** I think I made it clear that I would rule there was a breach of the privileges of the House. I said that it was important that members not be seen to be damaging national security by making these demands. That's why I said that we should make some arrangement to make sure that national security matters were not made public in the delivery of the documents and invited them to work that out. I said that, in my view, that was the past practice—

**Mr. Gilles Bisson:** That made sense, but what would have happened if the parties couldn't have worked it out? What would you have been stuck with?

**Hon. Peter Milliken, PC:** I guess ordering production.

**Mr. Gilles Bisson:** Ordering production of the documents?

**Hon. Peter Milliken, PC:** Yes, I think so.

**Mr. Gilles Bisson:** So if they had not worked it out, you would have ordered the documents to be released.

How much time do I have?

**The Chair (Mr. Shafiq Qaadri):** Two minutes or so.

**Mr. Gilles Bisson:** Two minutes. Let me ask a 30-second question. Do you have anything? Mine are longer than two minutes. We'll bunch our time later, okay?

**The Chair (Mr. Shafiq Qaadri):** The time expires, the 20 minutes. You don't recover it later.

**Mr. Gilles Bisson:** Well, listen, if I've got two minutes, I might as well use it. I ain't gonna give it up.

Listen, I guess what's at the crux of it here, and I think you're making it probably clearer, is that in the end the right of a committee and the right of the Legislature—for the committee or a Legislature to do its work, it has certain privileges. One of those is that we have to have the information before us to be able to make the informed decision.

It's pretty clear, by the rulings that we've seen with our Legislature here and the rulings that you've made federally and some of your predecessors, that that is a right that has to be taken seriously. Members and committees have to have the ability to request the information necessary to come to the decisions that it wants. I want to thank you for that, and we'll ask you some questions the next time around.

I figure about now, I've probably killed my two minutes.

**The Chair (Mr. Shafiq Qaadri):** Merci, monsieur Bisson. You have about a minute and a half left, but in any case, I'll pass speaking opportunity now to the government.

Mr. Delaney.

**Mr. Bob Delaney:** Mr. Milliken, thank you for having come in.

**Hon. Peter Milliken, PC:** It's a pleasure to be here.

**Mr. Bob Delaney:** It is unfortunate we didn't have a bit more time to bring you up to speed on the sequence of events over which you're being asked admittedly hypothetical questions and asked for your speculation.

You've talked about the ultimate authority of the House to produce documents and the difficult issues and competing interests that you dealt with in your 2010 Afghan detainee ruling.

As you know, we're here in part to review the matter of the Speaker's finding of a prima facie case of privilege with respect to the production of documents by the Minister of Energy and the Ontario Power Authority and the Ministry of Energy to the Standing Committee on Estimates.

Now, the Standing Committee on Estimates in May of last year made a request to three entities, the Ontario Power Authority, the Minister of Energy and the Ministry of Energy, for correspondence—not documents, but correspondence—related to the cancellation of these two power-generating facilities, and it asked for such correspondence and was silent on attachments within a narrow date range.

I'd like to put before you a letter the former minister provided to the Standing Committee on Estimates related to their request for document production, and we'll table that letter with the Clerk. In the letter, you'll see that the minister raised several concerns at the time. He flagged that there were files that were highly confidential and subject to solicitor-client privilege and litigation privilege. The concern raised at the time was that disclosure could have a negative impact on ongoing commercial discussion and litigation.

Ultimately, the committee chose not to address the concerns raised by the former minister. Instead, the majority of the committee decided at the time—May of last year—that it would force the production of sensitive documents. It essentially said, "We want it all, we want it now and we want it public."

Because of this approach by the committee's majority, the minister was ultimately required in a ruling from the Speaker to produce the documents requested. September 24, 2012, was the deadline provided by the Speaker for that production, and the minister claims that he complied with that deadline.

Let's start off with one question. The minister ultimately complied. Shouldn't that end the matter?

**Hon. Peter Milliken, PC:** If he complied with the demand for production of the documents, I would have thought it would have, yes.



**Mr. Bob Delaney:** In your experience, would you find it counterproductive, then, for there to be a finding of contempt based upon an order with which the minister ultimately complied?

**Hon. Peter Milliken, PC:** You mean after the minister complied, there was a finding of contempt?

**Mr. Bob Delaney:** Yes.

**Hon. Peter Milliken, PC:** Oh. I guess if he complied, I wouldn't have thought there'd be a further argument, but I'm—

**Mr. Bob Delaney:** Okay.

**Mr. Gilles Bisson:** Can you speak up, please? I'm having a hard time hearing.

**Hon. Peter Milliken, PC:** I said if the minister had complied, I would have thought there would not be further arguments as to whether there had been a breach or not, because if he complied, I don't know why there would be a breach. I don't understand that.

**Mr. Bob Delaney:** Okay. I'd like to just explore some of your thoughts on some matters raised in earlier questions, particularly about redactions of documents. Given the scope of the request originally made in May by the Standing Committee on Estimates to just three entities, the Ontario Power Authority, the Minister of Energy and the Ministry of Energy, if portions of a document requested lay outside the committee's terms of reference and the scope of that request, must, in your opinion, those portions be submitted pursuant to a request for documents?

**Hon. Peter Milliken, PC:** You mean part of the document was outside of the scope of what the committee was asking for?

**Mr. Bob Delaney:** Yes. Well, if, for example, you're asked for something pertaining to these particular plants and a piece of correspondence related to a matter completely unrelated—in complying with a request for the document, if that portion that lay outside the scope of the request is redacted, does it or does it not violate the request for the document?

0920

**Hon. Peter Milliken, PC:** So you're saying, if the letter concerned the project that you're talking about but there were paragraphs concerning another project in the letter, can you take those out? I don't know. I guess you could. I don't know why you couldn't. It doesn't appear to have anything to do with what was demanded.

**Mr. Bob Delaney:** Also the time span was very short, and the ministries involved in this case discovered that there were some employees who had left or other circumstances and subsequently found more documents, which they subsequently disclosed. With regard to the redactions, one of the issues here is: Does the civil service have the flexibility to disclose information outside the scope of that requested in an order from a committee?

**Hon. Peter Milliken, PC:** Does it have the authority to do it? I would have thought the public service can make public what they want. I'm not aware of restrictions. I'm not an expert in this area, but I would have

thought they could make public what they want to, unless there's a law that says they cannot. There would be restrictions on them in terms of personal information about individuals, but whether they can make public contracts they've signed or whatever—I don't know the law in that regard. I wouldn't think the law prohibits them from making public such contracts unless there's some security issue or something in there, but I don't know what the laws of Ontario are in respect of government contracts, for example. I don't claim to be an expert in this at all.

**Mr. Bob Delaney:** I understand. I was asking your opinion on it, and I thank you for that.

What advice or caution would you provide to members who are tasked with the various serious responsibilities about making a determination related to contempt to either a sitting member or a former member?

**Hon. Peter Milliken, PC:** Generally, if there's an allegation of contempt respecting a member, I think the normal thing is for the committee that's in charge of the investigation to be thorough in its examination of the evidence of that contempt and, of course, the member's own statements in respect of the matter and what the member thought he or she was doing and whether it was, in the member's opinion, in compliance with the demand that was made.

**Mr. Bob Delaney:** If a minister of the crown makes a statement, based upon information provided to him by his ministry or by the public service, that, at the time he makes it, he truly believes to be accurate, factual and complete, would that place him within the threshold of being found in contempt if such statement is later found to be either inaccurate or incomplete?

**Hon. Peter Milliken, PC:** I guess it was a matter of whether it was deliberately inaccurate on the part of the minister to make the statement. Obviously, that would put him in contempt. But if the minister believed, when he made the statement, that all the information that he or she had available was, in fact, tabled or made available or delivered to the committee or to the House, I'd have thought that would be fine.

**Mr. Bob Delaney:** In your 2010 work on the Afghan question, what time frame was given to produce the documents in question?

**Hon. Peter Milliken, PC:** There was no agreed limit on the time because there was such a volume, they didn't know how long it would take for the panel to go through them, and then appeals to the judges to be dealt with. So there was, in fact, no time limit imposed on the terms of the order.

**Mr. Bob Delaney:** At the time, was it required that all of the documents be delivered at once or could they have been delivered in batches?

**Hon. Peter Milliken, PC:** I'm sure they were delivered in batches.

**Mr. Bob Delaney:** Okay. For the finding of contempt, are there many precedents of finding a member of a provincial assembly or the federal Parliament in contempt?



**Hon. Peter Milliken, PC:** I don't know the answer to that.

**Mr. Bob Delaney:** Is it a censure that is commonly used?

**Hon. Peter Milliken, PC:** I'm sure that it has happened before; whether it was on production of documents or on other issues is another matter. Members can get into trouble for breaching the privileges of other members in the House, and so on. That has happened in the past, I'm sure. Members have been called to the bar of the House and dressed down by the Speaker, on occasion, in the past for various offences in the chamber, so yes, I'd say it has happened. It's not all that common, but it has happened.

**Mr. Bob Delaney:** The threshold is actually quite high. Why is that?

**Hon. Peter Milliken, PC:** The threshold of?

**Mr. Bob Delaney:** The threshold for a finding of contempt is actually quite high. Why is that?

**Hon. Peter Milliken, PC:** I couldn't tell you the answer to that. I think it's in part because the members generally work together in a legislative body and all have similar responsibilities. If somebody is going to be found in contempt of the Legislature as a sitting member of it, you'd want to make sure that there were good arguments in favour of making that kind of decision, because it's potentially damaging to one of your members.

**Mr. Bob Delaney:** All right. Based on your experience—in your view—what factors need to be present for a finding of contempt to be appropriate in the circumstances?

**Hon. Peter Milliken, PC:** A deliberate ignorance or ignoring the order or demand of the chamber, the Legislature, the House.

**Mr. Bob Delaney:** What kind of weight would you place on the word you just used, "deliberate"?

**Hon. Peter Milliken, PC:** Quite a lot of weight. I think, normally, you've got to make sure the person was misleading the House—"fairly deliberately" would be the words you'd want to have applied in there—by not producing documents that were demanded and were required.

**Mr. Bob Delaney:** I'd like to ask the Clerk to distribute a news release by the official opposition back in September 2012. Specifically, on the first page—I'm just going to quote from it—it says, "Contempt of the House is considered extremely serious.... Punishment for a person found in contempt may range from jail time to being brought before ... the House to be censured and admonished by the Speaker."

Again, I'm asking you in the context of your experience at the federal level: Would you agree that raising the possibility of jail time for a former minister in relation to this matter might be inappropriate?

**Hon. Peter Milliken, PC:** I think it might be unnecessary, yes. I would have thought that an admonition in the Legislature or that sort of thing would likely be enough, but I'm not sure. Of course, it's for the Legislature to decide what the punishment would be. I

think it's normally done by resolution; that's my recollection.

**Mr. Bob Delaney:** The news release in this case also raises the possibility of professional sanctions from the Law Society of Upper Canada. In this case, the individual that we're referring to, Chris Bentley, is the former Attorney General and a very prominent lawyer in London. Basically, Mr. Bentley makes his life in the practice of law and always has. The news release raises the possibility of professional sanctions from the Law Society of Upper Canada. Again, I'd like to ask your reaction: Is such speculation an abuse of process?

**Hon. Peter Milliken, PC:** Speculation as to whether the law society would do something?

**Mr. Bob Delaney:** Yes.

**Hon. Peter Milliken, PC:** I'm not sure it's an abuse of process, but it is, as you say, speculation. I have no idea whether the law society would do anything in circumstances where someone was found in contempt of Parliament. I've never heard of them doing anything, but how would I know? It's not something I'm aware of. That's the best answer I can give.

**Mr. Bob Delaney:** Chris Bentley, of course, is now a private citizen. Does it seem appropriate to continue contempt proceedings against a former minister of the crown, who is no longer a member of this assembly, based on what we've discussed here this morning?

**Hon. Peter Milliken, PC:** Yes, if that's the case, I find it odd. I would have thought the argument was, if there is continuing contempt, it would be whoever the minister is for failing to deliver these documents. I assume it's still an outstanding demand, from what you're saying, and if that's the case, the minister can always resolve the matter by tabling the documents, and that's that.

0930

**Mr. Bob Delaney:** Okay. And, again, I'd like just your reaction based on your experience. At the time the request was originally made for correspondence from the OPA, the Minister of Energy, the Ministry of Energy, Mr. Bentley was not the Minister of Energy nor associated with the Ministry of Energy, and yet much of the reason that we're here today is to pursue sanctions against someone who was not the minister at the time the request was made.

**Mr. Rob Leone:** Point of order: The motion before the House does not name any individual; it actually names the Minister of Energy, not any particular individual, so I think this line of questioning is out of order.

**The Chair (Mr. Shafiq Qadri):** I'll take your point of order under advisement, although I will not act on it. I give the floor back to Mr. Delaney.

**Mr. Bob Delaney:** Thank you. And given all the comments made in the Legislature, I think it's a little rich of Mr. Leone to claim that something he said in the House doesn't apply here.

**Mr. Rob Leone:** Point of order: In the Legislature, we've never mentioned Mr. Bentley's name. The only people who do that is you.



**The Chair (Mr. Shafiq Qaadri):** Mr. Leone, that is not a point of order. I would invite you to pursue that in the Legislature.

Mr. Delaney.

**Mr. Bob Delaney:** To go back to Mr. Milliken and your experience, sir, much of what we are dealing with here pertains to a request for correspondence from three entities during a narrow date range, and much of the objection that we've seen here concerns the actions imputed to a minister of the crown.

I want to come back again to these redactions. What latitude should the civil service have in complying with a request? Does the civil service, in complying with a request, have the latitude to provide a superset of the documents, or would it be expected by a committee that the civil service would do what's asked of them?

**Hon. Peter Milliken, PC:** What's a super—

**Mr. Bob Delaney:** In other words, more than what you asked.

**Hon. Peter Milliken, PC:** Oh. Should they produce more than what was asked for, is what you're asking?

**Mr. Bob Delaney:** Yes.

**Hon. Peter Milliken, PC:** Well, that's up for the minister to decide. The public service can provide whatever they want to the minister, but normally the minister would go through the documents, I assume, and say, "This is what was demanded. This is what I'm producing," and that's it, I assume. I don't know how that's handled, of course, at the administrative level. I think the demand is to the minister to produce, so it's the minister who has to make the final decision, but admittedly, he's going to get a lot of help from public servants who have a whole lot of the correspondence. But of course, it's not his, or very little of it will be, so almost all of it will be stuff that was done by departmental officials.

**Mr. Bob Delaney:** And obviously it would be very difficult for the minister to presume what is or isn't in documents that were generated by that ministry when he wasn't the minister of the crown.

**Hon. Peter Milliken, PC:** Sure.

**Mr. Bob Delaney:** Okay. Thank you, Chair.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney.

The floor now goes to the official opposition, to Mr. Yakabuski. Ten minutes.

**Mr. John Yakabuski:** Thank you very much, Chair.

Again, Mr. Milliken, thank you for joining us.

I just wanted to touch on an item, a question you were asked by the governing party here and your answer on it. I'll go back to the press release that he cited on the 21st of September 2012: "Contempt of the House is considered extremely serious," Wilson continued. "Punishment for a person found in contempt may range from jail time to being brought before the bar of the House to be censured and admonished by the Speaker."

He asked you, I would suggest, a political question in that regard, to which you answered your own view as to what you might have done, not necessarily as the Speaker but as a politician, it sounded to me. But my question to

you would be as someone who is considered to be an expert in procedural matters. Was there anything in that statement that was inaccurate from the point of view of what the possible censure could be for someone found in contempt of Parliament? I think that is the question, not what someone may have done in their case. It was simply outlining the possible penalties. Is that statement accurate?

**Hon. Peter Milliken, PC:** As far as I know, it is.

**Mr. John Yakabuski:** Yes. Thank you very much. I'll turn it over to—

**The Chair (Mr. Shafiq Qaadri):** Mr. Leone.

**Mr. Rob Leone:** Mr. Milliken, when a Speaker in a Commonwealth Parliament finds a person in *prima facie* breach of privilege, what exactly does that mean?

**Hon. Peter Milliken, PC:** In contempt, not—is that what you're asking?

**Mr. Rob Leone:** If you want me to repeat the question—

**Hon. Peter Milliken, PC:** The privileges are the privileges of the House itself that have been breached by a person. My understanding is that if there has been a breach of privilege, then that person has been found in contempt of the House for breaching its privileges.

**Mr. Rob Leone:** Okay, thanks. Now, if the cabinet had knowledge that not all documents were tabled, but numerous ministers stood in the House and repeatedly said the opposite, would that concern you?

**Hon. Peter Milliken, PC:** You mean they've said that all the documents were tabled?

**Mr. Rob Leone:** Yes.

**Hon. Peter Milliken, PC:** I see. Well, they would be inaccurate statements if they haven't all been, yes.

**Mr. Rob Leone:** And if portions of the documents that we have requested have been redacted—you've seen a small portion of them, and there's lots of them—would that, in your view, constitute the release of all documents to date? Even though we have requested them all—

**Hon. Peter Milliken, PC:** There's certainly an argument about it, if they have been redacted in that way, because you haven't received the documents. You've got nothing that's in it, really, except an indication there was one.

**Mr. Rob Leone:** Okay. If a staff member in the ministry or ministry officials tell their minister to say something that is untrue, whether intentional or not, once that statement is found to be untrue, wrong or incorrect, is there, in your view, a moral or parliamentary obligation to immediately correct the record?

**Hon. Peter Milliken, PC:** I'd think a minister would want to. If a minister had made an incorrect statement because of information that he or she had been given, if there was something that came out later that was damaging or altered the answer that had been given, you'd think you'd want to say, "My answer was incorrect because I've now discovered this, this and that," to make sure the Legislature was not misled.

**Mr. Rob Leone:** Then in the event that they potentially knew of the fact that their previous statements or

attestations were untrue and they waited some weeks before they actually informed the House of that, would that, in your mind, be a breach of our privileges as members of the House?

**Mr. Bob Delaney:** Chair, on a point of order.

**The Chair (Mr. Shafiq Qaadri):** Point of order, Mr. Delaney.

**Mr. Bob Delaney:** I believe Mr. Leone is asking the witness to comment on something on which the Speaker has already ruled.

**Mr. Rob Leone:** Which you were doing as well, just to be clear.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney. We take your point of order under advisement. It is up to the witness whether they answer or not.

Please continue, Mr. Leone.

**Mr. Rob Leone:** Mr. Milliken?

**Hon. Peter Milliken, PC:** Well, if the answer is given, whether it took a week or three weeks or two days or an hour I don't think is of particular concern. Once the answer is given, say the corrected answer, then there's no more contempt; it has ended it because the issue—

**Mr. Rob Leone:** How about if it was some weeks afterward?

**Hon. Peter Milliken, PC:** Well, I don't think the time is the issue, because if it's coming before the Legislature as to whether there was contempt, once the answer is given, that's the end of the contempt. You've made do. So I wouldn't have thought the timing was an urgent thing.

**Mr. Rob Leone:** But in the absence of the complete release of documents—because I believe we still do not have a complete release. We have asked for all documents. There are redactions, gaps in time and information missing. We would expect some documentation from the minister, from the Premier's office; we've requested all that information. In the absence of having that information, would you consider that still to be in breach of privilege, given our position that all the documents have not been released?

**Hon. Peter Milliken, PC:** Well, it's certainly a subject of argument for the Speaker to decide.

**Mr. Rob Leone:** Mr. Yakabuski has raised a pretty interesting question: In the future, if we should receive more documents, would that prove the inaccuracy of the statement that ministers have made in the House, in terms of the complete release of documents?

**Hon. Peter Milliken, PC:** You mean a minister has said, "Everything has now been released."

**Mr. Rob Leone:** That's right.

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**Hon. Peter Milliken, PC:** Well, it may be that everything the minister had has been released, and maybe there are other documents that the minister has never seen, that he doesn't know about, that haven't been. I don't think the minister is misleading the House if that turns out to be the case and some other documents were turned up from some other source or some other part of the

department that he had never seen. This is the difficulty with a large administrative department.

**Mr. Rob Leone:** True, but if there's a compliance date in the order of the House, that we want requested documents by a specific date, and we still have not received all those documents and the compliance date has long since passed, does that pose a problem to you in terms of what we're dealing with here?

**Hon. Peter Milliken, PC:** Not to me.

**Mr. Rob Leone:** In your opinion.

**Hon. Peter Milliken, PC:** It's a matter for the committee or whoever is making the demand, whether the Legislature or a committee that's making the demand, but it may be that they wanted to question some other officials who have been the ones who produced the set of documents for the minister to table. Who knows? I don't know how these things are done. The committee might want to find that out to see if they're getting everything because the minister may genuinely not know of things that have gone on, handled by other people, that have not made these available to the minister. This can happen, too.

It's not an area where everything is just as black and white as can be. You may have to look at other individuals.

**Mr. Rob Leone:** We'll have an opportunity to interview, in the course of our investigation, people who could answer that question for us.

If, during the Afghan detainee matter, you had uncovered examples of political interference at the staff or elected officials—that either staff had ordered departmental people to withhold documents from Parliament, would that be of concern to you?

**Hon. Peter Milliken, PC:** Yes, if that had come up. Yes.

**Mr. Rob Leone:** So if we have evidence—and we believe we do—that a member of a political staff has refused to release documents on this matter, that would be of concern to you, in terms of asking ministry officials, the Ontario Power Authority, to withhold documents? Would that concern you?

**Hon. Peter Milliken, PC:** If they hadn't been released as a result, yes, I suppose it would. Somebody can say, "Don't give that away," but if they go ahead and give it, then what difference does it make that the person said that? If that's your question.

**Mr. Rob Leone:** Last October, we were told that we had received all documents. We just had a release two weeks ago of another batch.

**The Chair (Mr. Shafiq Qaadri):** About a minute left.

**Mr. Rob Leone:** My question is, does that gap in time, in your view, constitute non-compliance with an order of the House?

**Hon. Peter Milliken, PC:** It's a matter for the House to decide, but there may be reasons why it was not made available at the time. There may be the fact that they were unavailable or undisclosed to the minister. Who knows? I don't know anything about it, but clearly, the



committee of the House considering the matter can look at those facts.

**Mr. Rob Leone:** How much time do I have?

**The Chair (Mr. Shafiq Qaadri):** Thirty seconds.

**Mr. Rob Leone:** I will conclude, Speaker Milliken, by just suggesting that I think in summary, we have established that a breach of privilege has existed, that there has been non-compliance with the order of the House—I think those are the claims that we have made—and that we still do not have a complete release of the documents, which is in breach of an order of the House, which is why we continue to pursue this matter. Thank you, Mr. Chair.

**Le Président (M. Shafiq Qaadri):** Merci, monsieur Leone. Je passe la parole à M. Tabuns.

**Mr. Peter Tabuns:** Thank you, Mr. Chair; Mr. Milliken.

Following on Mr. Leone's questions, we as a committee demanded production of documents. We were given a large batch of documents and told, effectively, that everything is now healed. When that was done, a short time later, yet another batch of documents was produced, and we were told that everything had been addressed. Then a third batch of documents was produced and we were told that everything had been addressed. As you might imagine, this has formed a suspicion in our minds that, in fact, not all documents were produced, and as has been said by the opposition, we see documents blanked-out. Given the level of what we think is well-founded suspicion, we don't have confidence that what was blacked-out was necessarily irrelevant to the matter before us.

I assume, based on things you've said so far, that you would see strength in our argument that this breach of privilege has not yet been healed and that it is reasonable for us to ask for evidence to determine whether or not there is an end to the breach of privilege?

**Hon. Peter Milliken, PC:** Well, I can see why the issue is around, yes, given the circumstances you've just outlined.

**Mr. Peter Tabuns:** In one instance, we asked the Premier's office, under a freedom-of-information request, for documents relating to Operation Vapour, to operation vapourlock—documents that had been released in batches by the government at an earlier point. We knew that there were documents beyond those in the time frame specified, and—

**Mr. Bob Delaney:** Chair, on a point of order.

**The Chair (Mr. Shafiq Qaadri):** Mr. Delaney.

**Mr. Bob Delaney:** May I ask whether or not a question regarding an FOI from the Premier or anyone else is within the scope of this committee's mandate?

**Mr. Peter Tabuns:** If I may say simply, my question leads to the question of violation of privilege. I understand the point you're making. I'm coming back to the documents that were released and their continued existence.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney. We'll prompt Mr. Tabuns to make the connection.

Please continue.

**Mr. Peter Tabuns:** When we asked for documents, some of which we had in our hands that had been released in one of the document dumps, we were told that such documents did not exist, and when we pressed further, we were told that there wasn't a requirement to preserve documents.

Can you tell us: Is it the responsibility of governments who are undergoing questions for production of documents to ensure that those documents are preserved?

**Hon. Peter Milliken, PC:** I have not read anything on that subject. I don't claim to know an answer to that one, and of course I don't know what government practice is in respect of maintaining or keeping documents in terms of records. When there is a demand for production, all I can say is, the documents that are in existence should be produced. That's what the request is for.

If some of the documents had been destroyed, obviously they're not going to be produced. Of course, it's possible that some of these were destroyed without the minister being aware of it because somebody else lost them or destroyed them. It could happen that you shred something by mistake that was an important document that should have been in the bundle that got tabled but wasn't because it was gone. I don't know how a demand for documents, once made and complied with in terms of delivery, can be argued to be incomplete if that sort of thing happened. I say "if": I'm not urging that it happened at all—don't misunderstand me—but I can see that it could happen. Just working in an office, you may have chucked something out that you shouldn't have, and then the document is lost. So when a demand for production comes along, somebody has to go through all the files and bring them out, and if that one isn't in there, it isn't there, and who's going to know? It's just one of those issues.

Where you could see it happening is, if a Legislature demanded production of documents and the government's copy of the letter that was sent to somebody else was destroyed and lost, but then the person who received the original letter comes up months later and says, "Oh, here's a document. This wasn't produced to you," do you then hold the minister in contempt for not producing it? I don't see how you could, because it wasn't in their possession.

That kind of argument might arise in a situation involving a big volume of correspondence. Similarly, I can see why you might have delays in getting chunks of documents because others were found that hadn't been located when the initial search was made or were in some other office or some other filing cabinet or somebody forgot about them and didn't produce them. Who knows? The committee, of course, can investigate why that happened; that's up to them. But the essential thing is I think that the documents be produced, whatever the government has, and that's the issue.

In terms of destruction, I'm unaware of any rules or anything of concern that deal with that issue within government or within Parliaments, for that matter. I just



don't know how you can go beyond getting what is in physical existence. So, technically, somebody who really wanted to make sure nothing happened could destroy the documents. If it was done before the demand was made for their production, that's the end of that.

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**Mr. Peter Tabuns:** There is no requirement for a government to preserve documents, or a body of documents, that have been requested by Parliament?

**Hon. Peter Milliken, PC:** There probably is a requirement in the law that they preserve them, but I don't know the ins and outs of that at all. I have no idea what the law requires, but if they were in the habit of destroying documents, and those were gone when the demand came from the Legislature or House to produce them, obviously they are not going to be produced, unless they're available in some other format, like maybe a disk, nowadays, which could happen and which might not have been the case 15 years ago or five years ago.

**Mr. Peter Tabuns:** In going through your Afghan detainee ruling last night, you were quite strong on the issue of the supremacy of Parliament in these matters. Is there any reason to think that this Legislature should have a different approach to the power of the Legislature when it comes to production of documents?

**Hon. Peter Milliken, PC:** Not that I'm aware of.

**Mr. Peter Tabuns:** And you made it clear that there may be circumstances in which a government might be reluctant to issue documents or make them available, but nonetheless, you reiterated the supremacy of Parliament throughout.

**Hon. Peter Milliken, PC:** Yes, and as you would no doubt be aware, if there had been a majority in the House, I suspect that the motion demanding production might not have passed, given it was an opposition motion. Given there was not a majority on the government side, the opposition passed the motion over government objections. The demand was made—it wasn't done in the House; I think it was done in a committee in the Afghan case—and the government had to comply and, obviously, was very reluctant to do so, in my impression. That was the reason the issue was raised, months later, in the House.

**Mr. Peter Tabuns:** My understanding is that, subsequent to all of this—subsequent to your ruling—there was prorogation and an election.

**Hon. Peter Milliken, PC:** Yes, and that's why I'm unaware of whether the documents have ever been produced, whether the committee ever finished its work and whether, in fact, it's continuing to work, because it may be argued now—and as I say, I don't know what has happened—that, with dissolution, the order or demand for the production of documents is dead. I don't know whether that argument has been advanced in the committee or not; I've heard absolutely nothing.

**Mr. Peter Tabuns:** I don't know if that argument has been advanced either. We find ourselves in a situation where a motion was reintroduced, this committee has

been struck and we're investigating the violation of the privilege of this Legislature.

**Hon. Peter Milliken, PC:** Exactly, and I don't know the ramifications of dissolution in that respect. I am just unaware. I didn't research it. I didn't have time to look at it after I heard about this yesterday.

**Mr. Peter Tabuns:** How much time do I have left?

**The Chair (Mr. Shafiq Qadri):** Fourteen seconds.

**Mr. Peter Tabuns:** Fourteen seconds. Well, I would like to thank you for coming here this morning.

**Hon. Peter Milliken, PC:** It was a pleasure.

**Mr. Peter Tabuns:** It was instructive, and I appreciate the work you did in the House on the Afghan detainee motion. All of us have used it to inform our actions—

**The Chair (Mr. Shafiq Qadri):** Thank you, Mr. Tabuns.

To the government side: Mr. Delaney.

**Mr. Bob Delaney:** I guess, as your last little piece with us here this morning, Mr. Milliken, I'd like to explore a little more along the lines of the scope of a request by a committee for the release of documents.

**Hon. Peter Milliken, PC:** For the production of documents?

**Mr. Bob Delaney:** The production of documents; excuse me.

**Hon. Peter Milliken, PC:** It might also get released, but it is "production."

**Mr. Bob Delaney:** Production. Okay.

Just as a recap: What was originally requested was correspondence from the Ontario Power Authority, the Minister of Energy and the Ministry of Energy between two date ranges. Is there a case for privilege if a document lies outside the date range?

**Hon. Peter Milliken, PC:** I wouldn't have thought so.

**Mr. Bob Delaney:** Okay. Would there be a case of privilege if a document rested within the power, possession and control of, say, the Minister of the Environment?

**Hon. Peter Milliken, PC:** Where the demand was to the Ministry of Energy?

**Mr. Bob Delaney:** To the Ministry of Energy and the Minister of Energy.

**Hon. Peter Milliken, PC:** I wouldn't have thought so.

**Mr. Bob Delaney:** Okay.

**Hon. Peter Milliken, PC:** Unless the letter came from the Minister of Energy to the Minister of the—

**Mr. Bob Delaney:** Okay, fair enough. And with the caveat that you have mentioned, would that include all ministries of a government save and except for those from which the specific request was made?

**Hon. Peter Milliken, PC:** No. I would have thought if the request was made for the correspondence in three specified departments or areas or organizations, that's all that would have to be produced to comply with the order.

**Mr. Bob Delaney:** All right, and that would include the Office of the Premier of Ontario, which was not asked for the production of documents—



**Hon. Peter Milliken, PC:** Yes, they wouldn't have been included. The Premier's office was not included in the request.

**Mr. Bob Delaney:** That's correct.

**Hon. Peter Milliken, PC:** Right.

**Mr. Bob Delaney:** Yes, okay.

I just want to talk a little bit about the document type requested. The document type requested, and it was very specific in the motion, was correspondence. So if a piece of paper, electronic or otherwise, is produced that falls outside the realm of correspondence, must that be included in that production of documents?

**Hon. Peter Milliken, PC:** I wouldn't have thought so.

**Mr. Bob Delaney:** Okay. In your experience, how did you adjudicate the scope of document production when such matters arose before you in the House of Commons?

**Hon. Peter Milliken, PC:** I don't think I ever had to deal with the issue of scope. It was simply a matter of whether the documents were being produced. I don't recall arguments, even on motions, for the production of papers that were adopted in the House. I don't recall arguments about the materials that were or were not tabled in those things. It may have happened, but if so, it usually happened in a committee, I think, where the member might go and complain that he tabled his motion and didn't get this or that. But how often do you know? I'm sorry, it's not a question I can readily—

**Mr. Bob Delaney:** No, I understand. I just want to ask another process-related question on the production of documents. You spoke about the Afghan issue and you said that you had asked the parties involved to work out an arrangement. In saying that, you were not prescriptive about the arrangement, but you said, "There are matters of national security here. Work out an arrangement."

In this case, the then Minister of Energy said, "I am caught between a rock and a hard place. We're dealing with documents that are the subject of litigation that are commercially sensitive," and the minister asked for some sort of arrangement.

Talk to me a little bit about what might have been the process that the parties could have followed in the circumstances to resolve this impasse in between the public release of documents and what other arrangements might have been within the realm of the possible.

**Hon. Peter Milliken, PC:** I would've thought one of the things that could happen is that a committee that demanded the production of the documents could have sat down with the minister in an in camera session and received the documents in camera, on the understanding they'd be handed back to the minister at the end of the in camera session. So they'd have a look at them and see what was there. But the idea with an in camera thing is, you would not have a public hearing of discussion about the documents and no public access to the documents, but the committee members could look at the documents. And then, the documents would be removed at the end of the hearing and taken out. That kind of arrangement could be made, in my view, and it could have happened with the Afghan documents, but because it was a national

security issue they didn't want to make it available to that many people.

**Mr. Bob Delaney:** Okay.

**Hon. Peter Milliken, PC:** It didn't happen.

**Mr. Bob Delaney:** In fact, all parties were offered exactly such an arrangement, and the majority on the committee demanded all the documents, all public, all now.

**Hon. Peter Milliken, PC:** This is here, in the Legislature?

**Mr. Bob Delaney:** Yes.

**Hon. Peter Milliken, PC:** I see.

**Mr. Bob Delaney:** Yes. So this left the minister of the day in a situation in which he either faced a contempt hearing, if he complied with the majority on the committee, or censure possibly from the law society and certainly litigation on behalf of the parties if he released documents that were then the subject of contractual negotiations, contained sensitive commercial information and, in fact, in some cases, were before the courts. How does that leave the minister?

**Mr. Peter Milliken, PC:** It's hard for me to say. That's a legal issue rather than a procedural one, so I don't know what the ramifications of that are. As I say, I'm not—I know I'm a lawyer, but I haven't practised for years, so I'm not familiar with that.

From a procedural point of view, it's not something that I think the Speaker would hear about until something had gone seriously wrong.

**Mr. Bob Delaney:** I'd like to read you a quote here. It goes as follows: "The minister is under no obligation"—

**Mr. John Yakabuski:** On a point of order.

**The Chair (Mr. Shafiq Qaadri):** Point of order, Mr. Yakabuski.

**Mr. John Yakabuski:** You'll have to rule on whether this is a point of order. The member indicated that the minister had made an offer to the committee. We dispute that and we'd like to have some clarification. Can you give us a date from Hansard as to when the minister made that offer to the committee?

**The Chair (Mr. Shafiq Qaadri):** Mr. Yakabuski, that's considered in the realm of a dispute over the facts and is not officially a point of order. Once again, I'd invite you to pursue that in the chamber.

Mr. Delaney?

**Mr. Bob Delaney:** Thank you.

My last question, sir: I'd like to read a quote from you. "The minister is under no obligation to resign for something a civil servant alone has done. This was never what ministerial responsibility meant ... the doctrine of ministerial responsibility, therefore, cannot always mean that a minister must resign for everything that goes wrong in his department."

Does that sound—

**Mr. Peter Milliken, PC:** Who said that?

**Mr. Bob Delaney:** It was, in fact, Mr. Leone in his PhD thesis.

**Mr. Peter Milliken, PC:** Oh, sorry. I thought you were quoting me. I thought that's what you said.

**Mr. Bob Delaney:** Oh, no, it's not your quote, sir; it's Mr. Leone's in his PhD thesis from McMaster University. Would you agree with Mr. Leone on that statement?

**Mr. Peter Milliken, PC:** I guess so.

**Mr. Bob Delaney:** All right. I think we're done. Thank you very much, Mr. Milliken. You've been a good sport and we really do appreciate your having come in, particularly on such short notice and without having the time to be fully briefed on the matter. Thank you so much for your attendance this morning.

**Mr. Peter Milliken, PC:** A pleasure to be here. Thank you.

**The Chair (Mr. Shafiq Qaadri):** I just thank you, Mr. Delaney. I'd also like to thank all members of the committee for beginning this testimony, and especially to you, Speaker Milliken. We are honoured by your presence. I'm sure the committee has benefited from your deliberations.

**Mr. Peter Milliken, PC:** Thank you, Mr. Chairman.

**Mr. Rob Leone:** Point of order.

**The Chair (Mr. Shafiq Qaadri):** Mr. Leone, point of order.

**Mr. Rob Leone:** I do have to correct the record, because if Mr. Delaney actually finished reading my dissertation, he'd know that misleading the House is actually a resignable offence.

**The Chair (Mr. Shafiq Qaadri):** I'm not really sure what kind of point that is, Mr. Leone, but I'll pass the podium to Mr. Tabuns.

**Mr. Peter Tabuns:** Yes, I'd like to move a motion, Mr. Chair, and I will provide copies to the Clerk for circulation to the committee.

**The Chair (Mr. Shafiq Qaadri):** Sure. As we're providing that, we'll have you read the motion.

I should also just advise committee members that though we're technically to go till 10:15, we will adjourn after the motion presentation and then reconvene at that time, Tuesday, March 19 at 8:30 a.m., to pursue our next line of testimony. I would, in that spirit, also—

**Mr. Peter Tabuns:** Well, listen to my motion and then make that statement.

**The Chair (Mr. Shafiq Qaadri):** Please go ahead.

**Mr. Peter Tabuns:** I move that in addition to the committee schedule agreed to on March 5, 2013, the Standing Committee on Justice Policy meet on Wednesday, March 13, 2013 from 9:30 a.m. to 11:00 a.m. to hear witnesses and to consider the matter of the Speaker's finding of a prima facie case of privilege, in the tendering, planning, commissioning, cancellation and relocation of the Mississauga and Oakville gas plants.

**The Chair (Mr. Shafiq Qaadri):** Though your motion is in order, Mr. Tabuns, I just remind the committee that the subcommittee decision was to sit only during sessional days, meaning when Parliament itself is sitting.

**Mr. Peter Tabuns:** That may have been the subcommittee's recommendation, but this committee can make its own decisions.

**The Chair (Mr. Shafiq Qaadri):** The motion is now under discussion. The floor is open for discussion. Mr. Delaney?

**Mr. Bob Delaney:** Chair, what's the point of this?

**Mr. Peter Tabuns:** If I may speak to that.

**The Chair (Mr. Shafiq Qaadri):** Yes, Mr. Tabuns.

**Mr. Peter Tabuns:** To allow us to move forward on this, Mr. Chair. Time is available. We have a lot before us. Members of the committee are available, and I believe we need to continue.

**The Chair (Mr. Shafiq Qaadri):** Mr. Tabuns, I appreciate the pursuit that you're exercising here of the committee's deliberations. Your comment that all committee members are available is probably incorrect, but in any case—Mr. Bisson?

**Mr. Gilles Bisson:** No, no. I'm just—

**The Chair (Mr. Shafiq Qaadri):** Is there any further discussion on this motion?

**Mr. Bob Delaney:** Chair, does the committee have the flexibility to meet on a day on which the committee is not normally scheduled? And this is in constituency week, when most of us at this point have already made plans.

**The Chair (Mr. Shafiq Qaadri):** Agreed. Mr. Bisson?

**Mr. Gilles Bisson:** Well, no; disagreed. First of all, the committee can meet at the call of the Chair, as per the order of the House, and this committee will decide when it wants to meet and how it wants to meet.

The other point I would make is that it's not without precedent that committees meet during constituency weeks. For example, the finance committee will be meeting next week in order to do pre-budget consultation. This is not anything new and strange.

**The Chair (Mr. Shafiq Qaadri):** Thank you. Are there any further comments before we—

**Mr. Rob Leone:** Call the question, Chair.

**The Chair (Mr. Shafiq Qaadri):** All right. The motion that Mr. Tabuns has presented is now before the floor. All in favour? All opposed? Carried.

This committee will therefore reconvene Wednesday, March 13, at 9:30 a.m.

The committee is adjourned.

*The committee adjourned at 1006.*





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Mr. Shafiq Qaadri (Etobicoke North / Etobicoke-Nord L)

Mr. Jonah Schein (Davenport ND)

#### **Substitutions / Membres remplaçants**

Mr. Rob Leone (Cambridge PC)

Mr. Taras Natyshak (Essex ND)

Mr. Peter Tabuns (Toronto–Danforth ND)

Mr. John Yakabuski (Renfrew–Nipissing–Pembroke PC)

Mr. Jeff Yurek (Elgin–Middlesex–London PC)

#### **Also taking part / Autres participants et participantes**

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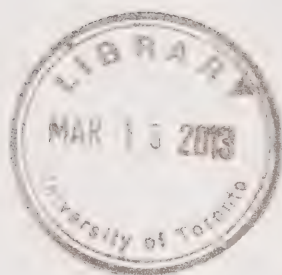
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## Assemblée législative de l'Ontario

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## Official Report of Debates (Hansard)

Wednesday 13 March 2013

## Journal des débats (Hansard)

Mercredi 13 mars 2013

**Standing Committee on  
Justice Policy**

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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE POLICYCOMITÉ PERMANENT  
DE LA JUSTICE

Wednesday 13 March 2013

Mercredi 13 mars 2013

*The committee met at 0931 in room 151.*

## MEMBERS' PRIVILEGES

**The Chair (Mr. Shafiq Qaadri):** Chers collègues, j'appelle à l'ordre cette séance du Comité permanent de la justice. Colleagues, I call to order this meeting of the justice policy committee.

## MR. BRUCE SHARP

**The Chair (Mr. Shafiq Qaadri):** As you know, we're here to hear from a number of different witnesses, beginning with Mr. Bruce Sharp. I would invite him to—for the affirmation. Please have a seat, Mr. Sharp.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Do you solemnly affirm that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth?

**Mr. Bruce Sharp:** I do.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Sharp. Also, just for the benefit of committee members, once again we'll be going in 20/20/20, 10/10/10 rotations, beginning with the NDP as they have invited this particular witness. Mr. Sharp, you'll have, as was just mentioned, 90 minutes in total in which to give your testimony, five minutes at the top of that for an opening statement.

I would also like to respectfully remind members of the committee that during the course of the committee's deliberations, if your honourable opposition members say something that you disagree with, that is not automatically a point of order. A point of order has a very specific meaning, and I would invite you to review that.

To begin with, Mr. Sharp, you have a five minutes' opening statement, and you're welcome to begin officially now.

**Mr. Bruce Sharp:** Thank you. I thank you for inviting me to appear here today. I get the sense that people may want to know a little bit about me, so I'll just quickly let you know. I've been in the energy sector in Ontario for 25 years. I'm a mechanical engineer. I've been in power generation, energy management, natural gas utilization, energy marketing and electricity consulting. I currently work with Aegent Energy Advisors. Today, I'm speaking as a private citizen, so I'm not speaking on

behalf of Aegent Energy Advisors. I'm here today to provide some independent expert insight, hopefully, and commentary.

The Ontario energy business can be complicated, and in electricity in Ontario in particular it's pretty complex, and so it can be confusing. My view is that there are so many people making money in so many different ways in the sector that when something goes wrong, no one wants to talk about it.

When the Oakville settlement details were made public in September, it was clear to me that the additional cost quoted of \$40 million was low, so I felt the whole subject deserved some attention. At that time, I did an analysis, some details of which appeared in a Toronto Star article and a Financial Post op-ed, both from October 10, 2012.

My analyses of these projects have evolved since that time. As always, I would welcome the release of transparent, spin-free information from originators of costs. I very much look forward to the reports that the Auditor General is preparing on these subjects. I hope that those reports will lead to the full discovery of facts, accurate analysis and a complete reporting of all findings.

Today I'm going to discuss Oakville and Mississauga costs and also make remarks concerning power system planning and the political nature of Ontario electricity policy.

Concerning costs of moving locations of gas plants, we always need to focus on cost additions or differences that arise. So when I talk about numbers, a positive number is an additional cost, and a negative number is a cost reduction arising from a change.

When we talk about Oakville, my current view is that the total cost of moving that plant is \$638 million. There are five elements to that.

The relocation cost of \$40 million, which has been discussed, I don't dispute.

There's a turbine payment of \$210 million.

With that turbine payment, there is a reduction in monthly payments, and I see that reduction as providing a benefit to the project, so that's a reduction of \$284 million.

On the subject of gas delivery and management, I see that as having a cost of \$313 million in transmission that will still be required.

Because of the project move, there's a cost of \$359 million.

So the total from that is \$638 million. I hope my math is right on that.

If we talk about Mississauga, there's a \$190-million number that is pretty much agreed upon. The only comment I would make there is that, in moving the plant from Mississauga to Sarnia, there's a distinct reduction of the gas delivery management costs, and it seems to me that that's a missed opportunity to possibly have a lower settlement for that project than we're currently seeing. So it could be that instead of \$198 million, the cost of moving that project might have been at least \$28 million lower if that reduction in gas management costs had been recognized and fully acted upon in the process of negotiating that plant move.

Now I want to get on to the abandonment of professional power system planning.

**The Chair (Mr. Shafiq Qaadri):** Thirty seconds left, Mr. Sharp.

**Mr. Bruce Sharp:** Okay.

We're seeing the results of abandoning power system planning. It's very unfortunate. We're seeing a lot of negative outcomes that are going to come up in the next little while.

On the subject of politics, I would just say that we're sitting here today because of the siren call of political intervention, and we really need to get away from that political intervention and swear a blood oath to not meddle in electricity policy in Ontario.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Sharp. We'll now begin with 20-minute rotations of all the parties, beginning with the NDP and Monsieur Tabuns.

**Mr. Peter Tabuns:** Thank you, Mr. Chair, and Mr. Sharp, thank you so much for coming in this morning. You've introduced yourself. I think everyone at the table understands your credentials.

The total you've calculated for the Oakville plant is a \$638-million cost. The government for a long time has said that the cost of the relocation was \$40 million. I am assuming from what you've said that that is not a credible figure to express the actual cost of relocation.

**Mr. Bruce Sharp:** I would agree with that.

**Mr. Peter Tabuns:** Okay. Do people in the energy industry generally see this as a non-credible number?

**Mr. Bruce Sharp:** I would say the answer to that is yes. I haven't spoken broadly to a lot of people about it. I think that the understanding of the elements is not necessarily that broad, and so there aren't necessarily that many people who really have enough understanding of it or a willingness to talk about it who would comment on that. But I think the people who understand it and are willing to talk about it would acknowledge that the \$40-million number is quite low.

**Mr. Peter Tabuns:** Okay. Last October, you wrote an email to myself, to the then Minister of Energy, to the opposition critic, to the Ontario Power Authority and to the auditor, and you outlined what you saw as the main elements that had to be recognized to understand the cost

of this relocation. I'd like to go through those with you to get a better idea.

**0940**

The first item, and a big-ticket item, is the gas delivery and management services cost. You say \$313 million. Can you tell us why that extra cost is there, why we're stuck with it?

**Mr. Bruce Sharp:** Sure. Gas delivery and management is effectively to move the gas from the referenced gas delivery point at Dawn, in southwestern Ontario, to the plant gate. The key thing here is that in the process of a settlement—I believe it's in the MOU, where it's described how all of the gas delivery management service costs will be transferred from TransCanada to some other party. It could be a cost that the OPA bears, and I think it ends up in the global adjustment. So, that cost is effectively moving it from that Dawn location to the Lennox GS, or the new plant location—we're talking about Oakville here. It's a complete offloading of the cost. So, whereas before TransCanada would have had that cost covered off in the monthly net revenue requirement payments, now that cost is being borne by somebody else. It's a pretty big number; it looks pretty innocuous in the MOU, but it's an annual cost that's in excess of \$20 million. I'm suggesting that the first-year cost is \$24.5 million. When you look at it on a 20-year basis and you apply a conservative discount rate to that, I come up with the \$313 million as a net present value for that cost.

**Mr. Peter Tabuns:** And when the agreement was made between the OPA and TransCanada Enterprises that took that cost and put it on the shoulders of Ontario ratepayers, the OPA would have been aware that this was a cost that they were incurring because the plant was relocating?

**Mr. Bruce Sharp:** I would agree with that. My understanding is, they do a fair bit of analysis on all these projects at different parts, starting with when any kind of idea of the project becomes known as a possibility. So, I would say that they probably had a pretty good sense of the order of magnitude. They may not have agreed exactly with my number, but they would have known that it was a very significant number.

**Mr. Peter Tabuns:** Okay, so, right there, substantially more than the \$40 million figure that was used pretty commonly—just to be clear: Typically, in a generation contract using gas, the monthly payments by the government would cover all this gas delivery and management?

**Mr. Bruce Sharp:** Correct; the payments would come from the OPA. But, yes, typically the monthly payments generally identified as net revenue requirements: The gas management cost would be included in that, yes.

**Mr. Peter Tabuns:** Okay. The next item you had in your memo was transmission costs. If you'll remember, the Ontario Power Authority said that this plant was necessary to provide local support in the southwest GTA. When the plant was moved, instead of having the plant there, transmission lines were going to have to be built.



Was the increase in transmission investment another cost that came out of the relocation?

**Mr. Bruce Sharp:** I believe that is an added cost. When the settlements of the plant move were announced, that number was ignored, as I understand it. In 2009, in a couple of different places, the OPA identified the need for that transmission if the generation were not to be built in that location, and they also put a cost on it. So, in 2009 they talked about the cost being \$200 million—

**Mr. Peter Tabuns:** Yes; that's right.

**Mr. Bruce Sharp:** So, in my analysis, I brought it forward to more current dollar terms. I increased the actual project cost to \$220 million. Then, it seems strange to have a project cost of \$220 million, but a cost to a net present value of \$359 million.

**Mr. Peter Tabuns:** Yes.

**Mr. Bruce Sharp:** But that arises from the fact that Hydro One, assuming they're going to be the owners of the asset, earn a rate of return on that investment that becomes part of their rate base. I did an analysis that showed, based on how that rate base would come into their general rate base and decrease over time with depreciation, they'd be earning a rate of return on it—their equity return, I think, is in the order of 9% on part of it. That just tends to increase the dollars involved, and that's how a \$220-million project cost becomes \$359 million as a net present value.

**Mr. Peter Tabuns:** At the time the Ontario Power Authority made their agreement with TransCanada, and at the time the government announced that this would only cost \$40 million, they would have been well aware that there was this transmission cost that was going to move up and that they were going to have to pay.

**Mr. Bruce Sharp:** Well, I think the OPA had been talking about it for a while—since 2009—so I would believe that the OPA would, in their minds, know that there was some cost coming for the Oakville area if they didn't site the generation there. I can't speak to what the OPA was saying to the government.

**Mr. Peter Tabuns:** No, I know you can't.

**Mr. Bruce Sharp:** But I think the OPA would've known about it. Again, we could quibble about the number, but they would know that there were some not-insignificant costs there for transmission.

**Mr. Peter Tabuns:** Okay. Now, the turbine purchase by the government of Ontario, or the OPA: Your calculation is that they were able to reduce some of their costs by doing that. Is that correct?

**Mr. Bruce Sharp:** Correct. If you view the turbine payment and the reduction in monthly payments in total, then I would say that there's a net reduction in costs between those two elements. That's what I have to say on that.

**Mr. Peter Tabuns:** In your email from last fall, you noted that there were other costs yet to be determined: gas pipeline hookups on the site, etc. Do you still believe that those costs are out there to be determined?

**Mr. Bruce Sharp:** Yes, I do. There are some limitations where, I think, TransCanada—either they pay the

first dollar amount on certain costs or there are caps on what might be borne by the OPA or other parties. I think there are inevitably going to be some additional costs, but I don't really have any comment on their magnitude right now.

**Mr. Peter Tabuns:** With the information that you have available to you, the cost of relocation is in the range of \$638 million and could be higher, as opposed to the \$40 million the government was using as a figure.

**Mr. Bruce Sharp:** Yes, I agree with that.

**Mr. Peter Tabuns:** Okay. If you'll excuse me one second, I want to ask you briefly about Mississauga. You note that there should have been reductions in the payments to the company because the gas supply was closer in Sarnia than it was in Mississauga. How were you able to determine the value of the credit that was missed here?

**Mr. Bruce Sharp:** I've just ballparked the number, based on looking at some tariffs between Dawn and the Mississauga location, and then looking at what they might be charged for the location in Sarnia. I've provided what I think is a pretty conservative, or low, number for that right now.

There are some dynamics that support my assertion that it's conservative. Right now there are definitely some bottlenecks in the system, getting the gas all the way to what's called the Enbridge CDA, the central delivery area. You can't even necessarily say that you'd be paying a published tariff for that; you'd have to go to the market to secure that pipeline capacity on a long-term basis. I'm pretty confident that the numbers are conservative. Again, it's one of those elements where, as with everything I do, there's some uncertainty. If there are people out there who have better numbers to provide to the process in a transparent way, I'm always quite welcome to hear those numbers.

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**Mr. Peter Tabuns:** Is there any reason that the OPA wouldn't have known about the potential for a better deal for gas with the relocation of Mississauga?

**Mr. Bruce Sharp:** I think they would have known about it. They're not gas experts, but they have a decent amount of knowledge in that area. They are very aware that it's a significant cost the developers have to bear, and so they should have a pretty good understanding of it.

**Mr. Peter Tabuns:** So in this case, we didn't get the deal that we could have. We could have gotten a better deal?

**Mr. Bruce Sharp:** From what I can see, and I'm surmising that the net revenue requirements at both locations are roughly equivalent. In that case, I think, in seeing that they would have had a lower gas delivery management services cost for the Sarnia location, you might have expected them to have a reduction in their net revenue requirement, because that's typically where that cost gets covered off.

**Mr. Peter Tabuns:** Okay. Jonah?

**Mr. Jonah Schein:** Thank you, Mr. Sharp.

From my standpoint, I'm trying to understand this huge difference between what the government has said



the costs are and what your assessments are. I'm just curious: What kind of documents typically would the government use for this kind of analysis? What should have been produced for an assessment of the risk, the cost of a move here, in your estimation?

**Mr. Bruce Sharp:** Well, I think they probably would have been calling on the OPA or hoping that the OPA would be able to provide them with information. Having said that, I did my analysis just using publicly available information, so I don't think it's impossible, even if you don't have a great flow of information from the OPA, to try to estimate on your own what the costs are.

Did that answer your question?

**Mr. Jonah Schein:** I think so, yes.

Then there's a question here about the kind of power that we have. This is a private power plant. Would you say that we're on the hook not only for the cost of the plant itself but the cost of future profits by the company as well? Does that make sense to you?

**Mr. Bruce Sharp:** Well, they have some pretty good rates of return built into them based on what their capital and ongoing costs are going to be and the monthly payments that they're going to receive. They've got a good rate of return. So ratepayers will be paying for corporate profits—not necessarily an evil thing, but it's a fact.

**Mr. Jonah Schein:** And that's just a fact of making a private power deal?

**Mr. Bruce Sharp:** Yes.

**Mr. Peter Tabuns:** Can I just follow on to that question? In contemplating a cancellation of a contract, the government isn't just looking at gas costs or transmission costs; they're also taking a risk that they'll be stuck with the cost of paying that rate of return that has been lost for the next 20 years and any damages a company will be claiming against them. Is that fair to say?

**Mr. Bruce Sharp:** Correct. I've never been involved in it, but my guess would be that some of the damages you might be liable for if you kill the project completely would be to pay the difference between the equity return that they were going to receive on the project and maybe a more risk-free or utility-oriented rate of return. Paying the difference on that over 20 years could end up being a fairly big number.

**Mr. Peter Tabuns:** Thank you.

**Mr. Jonah Schein:** You talked a bit about this, but can you explain the extra costs for gas in moving the plant to Napanee?

**Mr. Bruce Sharp:** The whole gas cost has been off-loaded in the case of the Oakville plant moving to Napanee. The idea there is that you have to have pipeline capacity that will meet the peak day requirement, and that peak day requirement is a function of how much gas you're going to be moving on an hourly basis and then so many hours per day to that plant. You need to contract for that on a firm basis, so you need to essentially own that capacity year-round.

There's a couple of different sections of pipe: one more what we would call transmission-oriented to get it from Dawn to the general Lennox area, and then there

would be something more local with Union Gas distribution pipe that you need to have. Both of those charges are on a capacity basis, and, really, you need to contract for them for those peak-day requirements. You may not use all that pipeline all the time throughout the different seasons, but you definitely need it for that maximum hourly or daily flow.

**Mr. Peter Tabuns:** Right. Makes sense. Just before we wind up our time, because I assume we're coming—

**The Chair (Mr. Shafiq Qaadri):** Three minutes, Mr. Tabuns.

**Mr. Peter Tabuns:** Three minutes. What you've been able to do in your testimony today is set out a factual basis for understanding the full scope of the cost of relocation that arose from the decision by the government of Ontario. You've noted that when they made that decision, they would have had to account for the risk of paying people for their lost profit for the next 20 years and that we in Ontario are going to bear a pretty hefty cost from that cancellation.

When it comes to the Mississauga relocation, we didn't, as a province—the OPA didn't take advantage of an obvious opportunity in having a much closer connection to the gas supply at the Dawn hub. In one case, we paid a lot more than was ever told, and in the other case, we could have gotten a better deal than we were presented with. Is that a fair summary of the testimony?

**Mr. Bruce Sharp:** I would say, on Oakville, yes. The only comment I would make about Mississauga is that the idea about there being a missed opportunity—that's the way it appears from the outside. There are a lot of moving parts to these things; you never quite know where there might have been a give-and-take. But it does seem on the surface that they might have missed out on an opportunity to lower those net revenue requirements in recognizing the reduced gas costs. The net present-value savings would have been about \$28 million.

**Mr. Peter Tabuns:** Just a last, if I can: I think we can assume that the OPA would have had the expertise to analyze, in advance, these cancellations—what the risks would have been.

**Mr. Bruce Sharp:** I would think so, yes. If somebody said, "We're going to be laying all the gas management costs from TransCanada onto the OPA," I think they would have had a pretty good idea of what those numbers would be. With that and other elements, I would think that they would be pretty well on top of those numbers.

**Mr. Peter Tabuns:** Okay. Do I have any other time left, Mr. Chair?

**The Chair (Mr. Shafiq Qaadri):** Twenty-five seconds.

**Mr. Peter Tabuns:** Twenty-five seconds. Are there other expenses related to the Lennox site that you think we should be looking at, that we should understand more clearly?

**Mr. Bruce Sharp:** I think there are, but I don't have any comment on their magnitude right now.

**Mr. Peter Tabuns:** Okay. So it is worth our while to continue looking at that?



**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns; thank you, Mr. Sharp.

I'll now pass the floor to the government side. Mr. Delaney, 20 minutes.

**Mr. Bob Delaney:** Thank you very much, Chair.

Good morning, Mr. Sharp. Thanks for coming in. You're a pretty active blogger and commentator on this, sir. Were you following the issue during 2011, during the election?

**Mr. Bruce Sharp:** Yes. I would say: probably more on the Oakville plant move, yes.

**Mr. Bob Delaney:** Okay. All right. Were you keeping up to date on the Mississauga plant as well?

**Mr. Bruce Sharp:** I would say yes. My comment on the Mississauga plant is that the information that's generally available is less detailed, less accessible and has more to do with debt financing, that kind of thing.

**Mr. Bob Delaney:** Had you done any analysis or calculations prior to the 2011 election?

**Mr. Bruce Sharp:** On either of the plants?

**Mr. Bob Delaney:** Yes.

**Mr. Bruce Sharp:** I don't think so, no.

**Mr. Bob Delaney:** Okay. Were you following who made commitments or decisions regarding the location of the plants at the time?

**Mr. Bruce Sharp:** No. Do you mean, which party might have been saying what?

**Mr. Bob Delaney:** Which parties had made decisions regarding the siting of the two plants.

**Mr. Bruce Sharp:** Not that closely. I just knew that there were discussions about them being moved and some of the more public processes to do with the Oakville plant, some of the celebrity people involved—that type of thing.

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**Mr. Bob Delaney:** Do you know which parties had made a policy commitment regarding the location of either or both of the two plants?

**Mr. Bruce Sharp:** I have a sense of it, but not really of the timing. I know what has been said in the press recently.

**Mr. Bob Delaney:** Would you know or recall whether one, two or all three parties had made decisions regarding the relocation of either or both plants?

**Mr. Bruce Sharp:** I can't say for sure if I knew exactly who said what.

**Mr. Bob Delaney:** All right, then let's get specific. Did the Progressive Conservatives make an announcement, to your knowledge, during 2011 regarding the locations of either or both plants?

**Mr. Bruce Sharp:** I can't speak exactly to what was said. My understanding of it, if I can comment generally, is that these were decisions that were made by the government, and the Conservatives and the NDP, I think, might have been somewhat manoeuvred into having to support the idea after the fact.

**Mr. Bob Delaney:** So in other words, you don't recall whether or not the Progressive Conservatives, during the

course of the 2011 election, made a decision to cancel the Mississauga gas plant?

**Mr. Bruce Sharp:** I don't recall, no.

**Mr. Bob Delaney:** You can't recall whether the Progressive Conservatives made a decision during the 2011 election to cancel the Oakville gas plant?

**Mr. Bruce Sharp:** Correct.

**Mr. Bob Delaney:** Do you recall whether or not the NDP made a decision during the 2011 election to cancel the Mississauga gas plant?

**Mr. Bruce Sharp:** No.

**Mr. Bob Delaney:** Do you recall whether, during the 2011 election, the NDP made a decision to cancel the Oakville gas plant?

**Mr. Bruce Sharp:** No.

**Mr. Bob Delaney:** Do you recall, during the 2011 election, whether or not the Liberal Party made a policy decision to cancel the Mississauga gas plant?

**Mr. Bruce Sharp:** I don't know about the Liberal Party. I just knew that—

**Mr. Bob Delaney:** I'm asking about the Liberal Party.

**Mr. Bruce Sharp:** Well, it was—

**Mr. Bob Delaney:** A yes or a no.

**Mr. Bruce Sharp:** I would say yes.

**Mr. Bob Delaney:** Okay. Do you recall, during the 2011 election, whether or not the Liberal Party made a decision to cancel the Oakville gas plant?

**Mr. Bruce Sharp:** I'm pretty sure I would say yes.

**Mr. Bob Delaney:** Do you recall, during that period of September to October 2011, whether or not the government of Ontario made a decision to cancel the Mississauga gas plant?

**Mr. Bruce Sharp:** It sounds a bit like we're getting into semantics here. I would say—

**Mr. Bob Delaney:** It's just a yes or a no.

**Mr. Bruce Sharp:** Yes.

**Mr. Bob Delaney:** Do you recall, during that period of September/October 2011, whether or not the government of Ontario—which, by the way, includes the Ministry of Energy—made a decision to cancel the Oakville gas plant?

**Mr. Bruce Sharp:** I can't remember the exact timing of these things.

**Mr. Bob Delaney:** Okay. All right.

**Mr. Bruce Sharp:** I just know that they occurred.

**Mr. Bob Delaney:** Okay.

**Mr. Bruce Sharp:** And I am pretty sure they occurred before the election, because my recollection of things is that these were election issues.

**Mr. Bob Delaney:** Then, taking what you've just said, acting on the assumption that those decisions would have been the same under all three parties, as all three parties in fact made the decision within days of one another, in your opinion, would the cost have been any different had the government of Ontario been either a Conservative or an NDP government? A yes or a no.

**Mr. Bruce Sharp:** So if there were a different government after October 2011?

**Mr. Bob Delaney:** Would the costs facing the government of Ontario, regardless of which party were running the government of Ontario, have been any different?

**Mr. Bruce Sharp:** I think back in September or October 2011—

**Mr. Bob Delaney:** A yes or a no.

**The Chair (Mr. Shafiq Qaadri):** I need to intervene for a moment. The witness is able to answer the question as he sees fit, and it's not part of the protocol of the committee to force a yes-or-no answer. So I'd invite you to continue.

**Mr. Bruce Sharp:** I think back in September-October 2011, there was probably a lot of uncertainty about what added costs would arise from the decisions made.

After the election, it's really hard to conjecture whether or not the ultimate costs, especially of Oakville, would have been different, because the settlement agreement wasn't announced until September 2012. So, depending on which party was in power, they might have directed the OPA and the Ministry of Energy to negotiate a different way, and they might have achieved different outcomes.

**Mr. Bob Delaney:** Okay. Have you in the past, in your writings, been critical of the energy policies of the current government?

**Mr. Bruce Sharp:** Yes.

**Mr. Bob Delaney:** Okay. Have you been critical of any of its green energy initiatives?

**Mr. Bruce Sharp:** Yes.

**Mr. Bob Delaney:** And have you taken issue with the government's costing on a few occasions?

**Mr. Bruce Sharp:** Yes.

**Mr. Bob Delaney:** Okay. I just want to run through a few things here. You made reference in your earlier testimony to a number of different organizations. With regard to the proponent of either the Mississauga or the Oakville gas plants, have you ever worked for either of them?

**Mr. Bruce Sharp:** No.

**Mr. Bob Delaney:** As in "been employed by." Has your firm ever been retained by either?

**Mr. Bruce Sharp:** No.

**Mr. Bob Delaney:** Have you ever met with people in either organization?

**Mr. Bruce Sharp:** I've been in the business for 25 years, so I just have to think about that.

**Mr. Bob Delaney:** During the period under question. In other words—

**Mr. Bruce Sharp:** No.

**Mr. Bob Delaney:** Okay, thank you. Regarding Enersource in Mississauga, again, the same questions: Have you ever worked for Enersource?

**Mr. Bruce Sharp:** No.

**Mr. Bob Delaney:** Been retained by Enersource?

**Mr. Bruce Sharp:** No.

**Mr. Bob Delaney:** Met with Enersource's planners or decision-makers?

**Mr. Bruce Sharp:** Not any time recently, no.

**Mr. Bob Delaney:** Okay. The Ontario Power Authority: During the time period in question, have you ever worked for the OPA, been employed by them?

**Mr. Bruce Sharp:** The only clarification I want to make is that I'm here speaking as a private citizen today.

**Mr. Bob Delaney:** Yes.

**Mr. Bruce Sharp:** I can speak to Aagent Energy Advisors, where I work now, but I don't think it's necessarily germane to the discussion.

**Mr. Bob Delaney:** So you've never been employed by the Ontario Power Authority?

**Mr. Bruce Sharp:** I have not, no.

**Mr. Bob Delaney:** And your firm has never been retained by the Ontario Power Authority.

**Mr. Bruce Sharp:** Aagent Energy Advisors, whom I'm not speaking for today, did some work for the Ontario Power Authority around July 2012.

**Mr. Bob Delaney:** Did you participate personally in that work?

**Mr. Bruce Sharp:** No.

**Mr. Bob Delaney:** Okay. Did you meet with planners or decision-makers from the OPA during this period in question?

**Mr. Bruce Sharp:** No.

**Mr. Bob Delaney:** Okay. Hydro One: Have you ever been employed by Hydro One?

**Mr. Bruce Sharp:** No.

**Mr. Bob Delaney:** Been retained by Hydro One?

**Mr. Bruce Sharp:** No.

**Mr. Bob Delaney:** Met with key decision-makers or planners from Hydro One?

**Mr. Bruce Sharp:** No.

**Mr. Bob Delaney:** Ontario Power Generation: Ever been employed by them?

**Mr. Bruce Sharp:** No.

**Mr. Bob Delaney:** Has your firm ever been retained by them?

**Mr. Bruce Sharp:** No.

**Mr. Bob Delaney:** Have you ever met with power planners or decision-makers—regarding these two plants—from OPG?

**Mr. Bruce Sharp:** No.

**Mr. Bob Delaney:** TransCanada: Ever worked for TransCanada?

**Mr. Bruce Sharp:** No.

**Mr. Bob Delaney:** Has your firm ever been retained by TransCanada?

**Mr. Bruce Sharp:** No.

**Mr. Bob Delaney:** Ever met with planners from TransCanada?

**Mr. Bruce Sharp:** No.

**Mr. Bob Delaney:** Enbridge: Have you ever worked for Enbridge?

**Mr. Bruce Sharp:** I worked for the predecessor company, Consumers Gas.

**Mr. Bob Delaney:** Okay.

**Mr. Bruce Sharp:** It has been Enbridge for a long time. The last time I worked there was 1997.



**Mr. Bob Delaney:** Okay, thank you. During the period in question, was your firm ever retained by Enbridge?

**Mr. Bruce Sharp:** We recently did some work for Enbridge.

**Mr. Bob Delaney:** And what was the nature of the work, please?

**Mr. Bruce Sharp:** It was a training course on generation.

**Mr. Bob Delaney:** Okay. In the course of that work, did you perform any capacity analysis? Did you do any quantitative work for Enbridge?

**Mr. Bruce Sharp:** For that specific type of generation that we're talking about, we did some analysis, yes.

**Mr. Bob Delaney:** Could you table that analysis with the committee, please?

**Mr. Bruce Sharp:** Give a brief summary of it?

**Mr. Bob Delaney:** No, we'd like to see a copy of your analysis. Would you table it with the Clerk of the committee, please?

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**Mr. Bruce Sharp:** We could provide, I think, some—we have a training deck that we delivered. I'm still not sure of the significance of it, given that I'm here speaking as a private citizen, and you're asking me to provide something from Aegent Energy Advisors.

**Mr. Bob Delaney:** Yes. Could you table that with the Clerk of the Committee, please?

**Mr. Bruce Sharp:** I can't commit to that right now. I'd have to speak to somebody at Aegent.

**Mr. Rob Leone:** On a point of order, Mr. Chair: The witness has declared that he is here acting on personal interest. Now you're trying to betray his professional—I think that this is witness intimidation.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Leone. I think procedurally I would have to rule that the witness has made reference to those particular documents, and as a legislative committee we have the power to essentially subpoena those documents if the committee so chooses. So it is in order.

Mr. Delaney, unless you want to continue this point, I'd invite you to continue.

**Mr. Bob Delaney:** Okay. Thank you very much.

So, again, I'm coming back to the analysis that you wrote. I've got this email that you had sent to Mr. Tabuns dated October 11, 2012. Over and above this two-page analysis, Mr. Sharp, what other quantitative work did you do?

**Mr. Bruce Sharp:** I would have looked at different gas tariffs to see what the annual tariffs are going to be. I would have done some calculations on how much gas the plant would use, based on making certain assumptions. Then I did some fairly rudimentary discounted cash flow analysis, where I would take annual payments over, say, a 20-year period and bring them back to net present value terms.

**Mr. Bob Delaney:** Okay. Did you send this analysis to Mr. Tabuns?

**Mr. Bruce Sharp:** No.

**Mr. Bob Delaney:** To Mr. Bentley?

**Mr. Bruce Sharp:** No.

**Mr. Bob Delaney:** To anyone in the government?

**Mr. Bruce Sharp:** No.

**Mr. Bob Delaney:** Would you table it with the committee, please?

**Mr. Bruce Sharp:** Sure.

**Mr. Bob Delaney:** Okay.

I'm having trouble getting to the essence of your conclusions here, because your conclusions are based on an email, but you haven't substantiated your email. Is there a reason that you didn't table some of your analysis with the committee prior to this so that we could have a look at it? I'm not questioning your methodology, but I'd like to see your methodology.

**Mr. Bruce Sharp:** I'm happy to share it with you. I didn't necessarily know you needed it.

**Mr. Bob Delaney:** Okay. So, to review your article, you don't take issue with the \$40 million attributed to the sunk costs. Correct?

**Mr. Bruce Sharp:** Correct.

**Mr. Bob Delaney:** So when we talk about sunk costs, we would include such expenses as fees for architects, engineers, consultants and things like that?

**Mr. Bruce Sharp:** I don't recall the details, but I would generally agree, yes.

**Mr. Bob Delaney:** Okay. Basically, then, your focus is really on other costs that are associated with the relocation, such as turbine payments, gas deliveries, transmission and things like that?

**Mr. Bruce Sharp:** Yes.

**Mr. Bob Delaney:** Okay. In your article, you talk about a turbine payment. You might also be aware that, to offset the turbine payment, the OPA negotiated a lower price for the power produced for the new plant. Correct?

**Mr. Bruce Sharp:** Correct. They negotiated a lower net revenue requirement or monthly payments, yes.

**Mr. Bob Delaney:** Okay. So, although you said that you had not been briefed by OPA, to quickly recap, the original plant in Oakville was to receive \$17,277 per megawatt capacity per month for 20 years. Is that figure familiar to you?

**Mr. Bruce Sharp:** Yes.

**Mr. Bob Delaney:** Okay. And the new price negotiated was \$15,200 per megawatt per month. Also familiar?

**Mr. Bruce Sharp:** Yes.

**Mr. Bob Delaney:** All right. So, to do the quick math, over a period of 20 years that would add up to roughly \$450 million. We're still on the same page?

**Mr. Bruce Sharp:** Yes.

**Mr. Bob Delaney:** Okay. To look at your costing, which we both agree is not formal—this is just an email, and you'll table with us your formal costs—where is that \$450 million in savings?

**Mr. Bruce Sharp:** The \$450 million—I'm trusting you on doing the 20-year math there—those are nominal dollars. For all the dollar amounts that I talk about in my analyses, you need to be able to compare apples and apples. I bring them all back to net present value terms so

that you can—it's just a common project analysis methodology used.

You take those nominal dollars in each year and you discount them back, using some discount rate, to net present value terms. That's how the roughly \$450 million in nominal dollars become, in this case, \$284 million in net present value dollars.

**Mr. Bob Delaney:** So in other words, you've discounted the value by half, based upon a series of assumptions in the calculations that you will table with the Clerk to distribute to the committee, which we can then have a closer look at, correct?

**Mr. Bruce Sharp:** Correct.

**Mr. Bob Delaney:** Thank you. Speaking about delivery charges: In general, no matter what we're talking about, any plant is going to incur certain delivery charges, right?

**Mr. Bruce Sharp:** Correct, yes.

**Mr. Bob Delaney:** So in your estimate, you've attributed \$346 million to gas delivery charges with respect to the new Lennox plant.

**Mr. Bruce Sharp:** That was my number back in October, and I've just revised it. My current number is \$313 million, but certainly in the same order of magnitude.

**Mr. Bob Delaney:** How can you be certain? Because that plant hasn't been built yet.

**Mr. Bruce Sharp:** I'm just working off of the general technical understanding I have of the plant: the number of megawatts, the type of heat rate that that plant would have; how much gas would arise from that many megawatts, that heat rate; how it works out to a daily gas flow, and then looking at current gas tariffs as I understand them.

**Mr. Bob Delaney:** In other words, it's a ballpark estimate.

**Mr. Bruce Sharp:** Yes.

**Mr. Bob Delaney:** Okay, that's fine.

**Mr. Bruce Sharp:** We won't have an opportunity to know the exact dollars until the plant is operating.

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Bob Delaney:** Okay; thank you very much.

One last question: With regard to transmission fees, you've suggested an additional cost related to this type of fee that is directly attributable to relocation, right?

**Mr. Bruce Sharp:** Yes.

**Mr. Bob Delaney:** Okay. I'm going to explore that in a little bit more detail in our next round of questioning.

Mr. Chair, I'm going to wind it up here.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney.

To the Conservative side: Mr. Fedeli.

**Mr. Victor Fedeli:** Welcome, Mr. Sharp. First of all, I want to say thank you for being here as a private citizen on your own time and on your own dime. Much appreciated, to have you here.

After the questioning from the Liberals, we've now determined that you are an expert, certainly with a long and successful career. Again, I appreciate you being here.

I was very impressed with the track record that you have established here.

I want to ask a couple of things. Following up on both sets of questions, I want to get to the nub of the \$638-million number that you have, just kind of outlining again the various components that go into that.

Let's talk about the gas delivery again. You're suggesting we start at \$40 million as one of the numbers that we use to come up with the total. The next number was \$313 million, and that was for the extra gas delivery. Was that correct?

**Mr. Bruce Sharp:** It's for the gas management costs being offloaded from TransCanada onto the Ontario Power Authority. It's the complete cost of moving gas from Dawn to Lennox-Napanee.

**Mr. Victor Fedeli:** So the Dawn facility is near Sarnia.

**Mr. Bruce Sharp:** Yes.

**Mr. Victor Fedeli:** And you're suggesting that by moving the gas from Sarnia to the Oakville plant, but now moving it from Sarnia to the Bath plant, or the Lennox plant, that's the difference in the extra miles? Is that putting it in plain English?

**Mr. Bruce Sharp:** Well, the added cost related to gas management arising from the decision to move the plant from Oakville to Lennox is the total gas management cost. The difference in moving it to Oakville versus moving it to Lennox is really irrelevant. Before, TransCanada was going to pay the gas management costs itself in the Oakville location. Now there is a higher cost associated with Lennox, but they've offloaded the total cost of gas management onto the Ontario Power Authority.

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**Mr. Victor Fedeli:** So in the original arrangement, TransCanada would have absorbed that cost of gas management within their own house and their own pricing structure, but in this new deal, they were able to spin that cost off to the OPA. Is that what you're saying?

**Mr. Bruce Sharp:** Correct. Typically, the gas management costs are embedded or paid for in the monthly net revenue requirement.

**Mr. Victor Fedeli:** So that is an extra \$313 million that would have normally been absorbed by TransCanada but now is being paid by the OPA or some other government agency and that will end up in global adjustment, which will end up on our hydro bill. Is that your estimation of the number?

**Mr. Bruce Sharp:** For Lennox, yes. At Oakville, it would have been some smaller number that I can't really comment on right now. But the key thing is that the complete cost, as documented in the settlement MOU, has been offloaded onto the OPA.

**Mr. Victor Fedeli:** So \$40 million in sunk costs, \$313 million in gas delivery/management: Is that a fair, simplistic way of putting it?

**Mr. Bruce Sharp:** Yes.

**Mr. Victor Fedeli:** Okay. I understand that the gas delivery and management service cost is allegedly offset with the \$17,277 per megawatt per month going down to



\$15,000. I understand, historically, that there are contracts from the OPA in the \$10,000-a-month range and that the average in Ontario is just a shade over \$13,000 a month. Would you concur with those numbers?

**Mr. Bruce Sharp:** I just want to tackle the first part before I get onto the monthly numbers. I'll just tackle what you said. Maybe if you'd kind of bear with me, I'll just quickly go through the costs that I mentioned in my remarks and speak to what you're asking about.

We have the relocation costs of \$40 million. We already talked about gas delivery and management services, right now at \$313 million. There's a turbine payment of \$210 million.

The reduction in monthly net revenue requirement payments: I see that individual component itself as having a benefit, mitigating the general cost of the project. It has a benefit of \$284 million.

Transmission: I have a net present value number of \$359 million.

I'll definitely acknowledge that now—I said that my analysis has evolved, and I have a different view of particularly the interaction between the turbine payment and the reduction in monthly payment, so—

**Mr. Victor Fedeli:** You think there is a relationship between that?

**Mr. Bruce Sharp:** Well, I kind of viewed them together before, and I saw it kind of in a negative light. But I think I needed to change my view to have a consistent analysis methodology, consistent with the way I looked at gas delivery and transmission.

**Mr. Victor Fedeli:** Go to the second part of my question. This is from \$17,000 and change, to \$15,000. Is the industry average approximately \$13,100 per megawatt per month? And are there contracts out there in the \$10,000-per-megawatt-per-month range?

**Mr. Bruce Sharp:** My understanding is, there are contracts in the \$10,000 range. I can't recall if the industry average is in the order of \$13,000 or \$15,000.

You might be referencing an email that I think came out—it might have come from somebody in the Ministry of Energy to possibly the press gallery—last summer that talked about those monthly net revenue requirement payments. It's either \$13,000 or \$15,000.

**Mr. Victor Fedeli:** So dropping from \$17,000 to \$15,000 is nothing magnanimous, in your opinion, then, considering that is more the norm than unusual?

**Mr. Bruce Sharp:** I would agree with that.

**Mr. Victor Fedeli:** We've got \$40 million in sunk costs and \$313 million for gas delivery management. The next one you talk about is transmission.

I have an internal document from the Ontario Power Authority, and I'll read you one line. It says, "We've said before that the cost of the transmission alternative"—they're speaking about Oakville here—"is approximately \$200 million." This is a 2009 document. This was a question and answer that the OPA and the Ministry of Energy had back and forth with each other. Number 8 was, "How much will the transmission" have cost? The

answer is, "The cost of transmission project is estimated at \$200 million."

In 2009, they said that if we do not do this Oakville plant, we need to add \$200 million to transmit power into Oakville. They're at \$200 million, which is not included in the \$40 million anywhere. You have included a number and then extrapolated the number to net present value. Can you just talk a little about why you believe the number should be included and what your number actually is, please?

**Mr. Bruce Sharp:** In addition to providing confirmation of this \$200-million number, I think the \$200-million number and the general need for either generation or transmission reinforcement in the area was in the public domain back in 2009 when the OPA was really introducing the project—I think when they had an RFP to acquire the generation supply.

**Mr. Victor Fedeli:** So it's, "If you want power there, you need to either make it there or transmit it there"?

**Mr. Bruce Sharp:** Correct; increase the transmission—

**Mr. Victor Fedeli:** So the \$200 million back in 2009—what's your net-present-value number on that today, the number you used in your calculation?

**Mr. Bruce Sharp:** I took the nominal \$200-million number from 2009, brought it forward to about 2014, increasing it roughly 10% to \$220 million, then I looked at how a \$220-million transmission project translates into an annual rate base, and then how that rate base translates into transmission costs paid by ratepayers. I looked at a cash flow analysis and then discounted it back to net-present-value terms using a discount rate of 5%. It comes in higher than \$220 million, I believe, because of things like the equity rate of return that Hydro One is allowed to make on their rate base. So that \$220-million project cost in 2014 becomes a net present value of \$359 million.

**Mr. Victor Fedeli:** So your number of \$638 million—does that include the \$40 million?

**Mr. Bruce Sharp:** Yes.

**Mr. Victor Fedeli:** Okay. Are you aware, through the media or through any other way, that in recent history, TransCanada was offered \$712 million to settle this claim, which happens to be pretty close to your number, incidentally? Were you aware that TransCanada was offered and rejected that offer?

**Mr. Bruce Sharp:** I heard about that. I think I saw it in one of the documents that came out of the initial 50,000-page dump. I heard that \$712-million number, yes.

**Mr. Victor Fedeli:** I'm sorry?

**Mr. Bruce Sharp:** I did hear the \$712-million number, yes.

**Mr. Victor Fedeli:** So you were aware, then, that TransCanada was offered \$712 million and rejected it—a number reasonably close to the number that you have developed?

**Mr. Bruce Sharp:** Yes.

**Mr. Victor Fedeli:** Okay. Back to your cost of \$40 million and the gas delivery management and the trans-



mission: In your opinion, would the OPA or the Ministry of Energy have known of these numbers as well—that there would be transmission costs or a gas-delivery-management-service cost?

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**Mr. Bruce Sharp:** While I think the OPA would have known about those costs and had some opinion on them, I can't really comment on the Ministry of Energy. My sense is that, in this particular area, there's probably more expertise at the OPA than there is at the Ministry of Energy.

**Mr. Victor Fedeli:** Okay. So the fact that the government has cancelled the Oakville plant, moved it to the Lennox facility—a site considerably farther away that has additional gas delivery management and additional transmission costs—I want to know: In your analysis, the fact that they sole-sourced this new plant to TransCanada in a new location—they've come up with a number of what they're paying TransCanada, the sole source. Would you have attributed any of that sole-sourced costing to your projection, or, once it's determined what the difference in the sole source is, would that be considered extra to this contract?

**Mr. Bruce Sharp:** I didn't make any judgments about whether or not I felt something was sole-sourced, so I don't really have a comment on that.

**Mr. Victor Fedeli:** So if it was indeed—well, they are the only proponent, and they were awarded the contract without a bid, so we can assume that that sole-sourced contract will have costs attributed. Would any of those costs have factored into your math at this point, or would I consider those to be yet-to-be-determined extra costs?

**Mr. Bruce Sharp:** I think to answer that, I would just reiterate that when I looked at this whole event occurring, whether it be Oakville or Mississauga, I was just trying to evaluate the incremental costs of the move. So to make a judgment on sole-sourcing, I would be perhaps making a judgment about what the costs would have been if the plant had remained in Oakville. It really just wasn't the intent of my analysis. I saw one number come out in the public domain, and I felt the number was different, so I tackled it on an incremental basis.

**Mr. Victor Fedeli:** That's fair. So we can assume, then, that both the sole-sourced contract for Oakville and the sole-sourced contract that went to the Lambton site would be somehow above and beyond the numbers that you have developed. I will make that assumption, then, based on what you're saying, that it's not in your math today. I can then assume that once we determine the real value of the contract in Oakville or the real value of the contract in Mississauga—formerly Oakville, formerly Mississauga—we'll be able to get to that further number, those further hundreds of millions, in the near future.

But you mentioned Mississauga and the fact that because it's now in Lambton, there's actually a lower cost to get the gas to Sarnia, but that hasn't been accounted for anywhere. So I would ask you: Who's making the money, then, on the savings? In your determination, who's making that extra \$20 million or \$30 million that you talked about if it doesn't show up yet?

**Mr. Bruce Sharp:** First of all, I just want to say that that's my assumption, based on my understanding that the net revenue requirement hasn't changed at all, or has not been reduced materially. Having said that, I do believe there is a lower gas management cost. Without even looking at the numbers, you just, I think, can generally understand it intuitively. So if that lower cost is occurring and there is no change in the monthly payments otherwise to the project developers, operators, then that's a bit of a windfall for them. They'll be pocketing that money. So it will just improve their economics relative to where they otherwise would have been.

**Mr. Victor Fedeli:** Okay. Would you concur that there's a fiscally responsible way to have moved these gas plants and an irresponsible way to move the gas plants?

**Mr. Bruce Sharp:** I can't really comment about responsible or irresponsible. I think once you make the decision to move them, then you just really need to negotiate the best deal possible for ratepayers once you've made those decisions.

**Mr. Victor Fedeli:** Would you agree that the decision to build those comes before the decision to move them?

**Mr. Bruce Sharp:** To build the plants at their original sites?

**Mr. Victor Fedeli:** I'm sorry?

**Mr. Bruce Sharp:** Sorry—the decision to build them at their original sites comes first?

**Mr. Victor Fedeli:** Yes.

**Mr. Bruce Sharp:** Yes. I believe that the OPA has a very capable power system planning group, and they didn't site these plants in Oakville and Mississauga just to make trouble. They were there with a specific purpose in mind in terms of where the load is, where generation is coming from, how easily that generation flows to those areas, so I think that they were sited there very deliberately.

**Mr. Victor Fedeli:** Okay. So my final question would be: What are we missing, Mr. Sharp, that could help your analysis continue?

**Mr. Bruce Sharp:** I don't necessarily want my analysis to continue.

**Mr. Victor Fedeli:** But if you were so asked, what do you need from this committee to help in your analysis? What are the missing pieces?

**Mr. Bruce Sharp:** As I said before, what we really need to do is for the people who have a good handle on these costs to come forward with very transparent numbers; not just a single number, but—

**Mr. Victor Fedeli:** Do you think we have all the information at this point?

**Mr. Bruce Sharp:** Not in the general public domain. They may be buried in documents somewhere, but I think it just needs to be presented a little more transparently, a little more concisely, with all the underlying assumptions accompanying that.

**Mr. Victor Fedeli:** So you're looking for the government to be honest with all of the documents and provide all of the documents?



**Mr. Bruce Sharp:** Oh, I don't think I'm going to answer that question. I would say, we'd just be looking for, as I said earlier, a transparent and spin-free disclosure of—

**Mr. Victor Fedeli:** Do you think we have that today?

**Mr. Bruce Sharp:** Not in the general public realm, no.

**Mr. Victor Fedeli:** Okay. Thank you, Chair.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli.

Mr. Sharp, your analysis will, in fact, continue at least for the next 30 minutes, in 10-minute rotations. To the NDP now.

**Mr. Peter Tabuns:** Thank you, Chair. Mr. Sharp, thank you; you've been very level and even in your presentation today. I appreciate the fact that when you analyzed the overrun, you also looked at where the government should get credit for an action that was taken. So you took a very balanced approach to giving us numbers.

I appreciate your offer to bring forward your background documents on this analysis. I want to note that it's the committee as a whole that can require documents, not any individual member. I understand that one of my fellow committee members may be asking us to require a presentation from you on a gas plant training deck. Can you tell us what that is?

**Mr. Bruce Sharp:** Again, I don't think it's really relevant to what we're talking about here today—

**Mr. Peter Tabuns:** No, I don't think so either.

**Mr. Bruce Sharp:** It has to do with my day job, so to speak. I'm not here speaking on behalf of my day job employer, but—just a training course that we're giving to some people at Enbridge to provide them with a little more technical depth on the subject of combined heat and power generation. I don't think it has anything to do with what we're talking about today.

**Mr. Peter Tabuns:** No. Based on your earlier comments, it didn't sound like it, and what you just said makes it pretty clear. We are inquiring into two decisions made by the Ontario Power Authority and, frankly, the government of Ontario. Having your company show documents on how to run gas power plants for Enbridge has no relevance in terms of what we're dealing with here.

Another question Mr. Delaney raised was around the credit for the net revenue requirement, the monthly payments per megawatt. He did a quick calculation and gave himself a much bigger number; you have another. I understand it's an accounting convention to set up what's called net present value. We're trying to make everything apples and apples so we can compare value, and what was presented to you was an orange and an apple. Can you tell us why you try and make sure we have apples to apples in these comparisons—why you use that accounting approach?

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**Mr. Bruce Sharp:** Sure. It's really a financial analysis technique.

Let's say you're doing a project analysis. You have different elements of a project cost and they have num-

bers that vary throughout the life cycle of projects—say, over a 20-year term. You want to be able to bring it back to one common reference point and then, for each element, add up the numbers. Then you have, basically, a net present value. In project-analysis terms, it would often be, "If I have a positive NPV at the end of the day, then it's a good project for me. I'm going to go ahead and do it." In this case, we're not necessarily talking about a go/no-go decision, but we're just trying to bring it back to one reference point.

It just so happens that in the three areas where I was using the discounted cash flow technique—reduction of monthly payments, gas delivery management and transmission costs—I was using a common discount rate anyway. That's part of why my analysis viewpoint changed from October: because I was applying a common rate. That's why my view on, say, the reduction in net revenue requirements changed.

It's certainly nothing I invented; it's more of a financial analysis technique.

**Mr. Peter Tabuns:** My experience is that most normal human beings don't understand these accounting concepts. I wrestle with it occasionally; I get glimpses of it, but what you tried to do in a very standard way was make sure that everyone could understand: "This is an apple, this is an apple, this is an apple; you can compare them." We're not mixing a whole bunch of other elements in here and then—

**Mr. Victor Fedeli:** Fruit salad.

**Mr. Peter Tabuns:** Yes, I know. I wasn't going to go there, because I knew it would get us into all kinds of trouble.

I'm just trying to make sure that there was clarity.

**Mr. Bruce Sharp:** Sure.

**Mr. Peter Tabuns:** You've pointed out, effectively, beyond the sunk cost the government claimed, two other costs that we must take into account if we want to understand how much extra is being paid for this cancellation. One is the gas management charge and one relates to building new transmission capacity. These are not secrets in the industry; I'm assuming that everyone recognizes that if you move the plant, you're going to have to have transmission lines to get its power there. Agreed?

**Mr. Bruce Sharp:** Well, the transmission project identified by the Ontario Power Authority and that I'm talking about isn't about moving the electricity from, say, the new Lennox location to the load—

**Mr. Peter Tabuns:** No, that's correct.

**Mr. Bruce Sharp:** —but it's really about providing transmission that you would need to build in the Oakville area because of the decision to not site new generation there.

**Mr. Peter Tabuns:** But we could have one or the other. We could have generation or we could have transmission. We all recognize that that cost comes forward if you move the generation away.

**Mr. Bruce Sharp:** Correct. A transmission cost will be incurred.



**Mr. Peter Tabuns:** And if you vary the contract with TransCanada so that the ratepayers of Ontario now pay all this gas management cost, that's another damage that comes out of the relocation. That's correct as well?

**Mr. Bruce Sharp:** Yes.

**Mr. Peter Tabuns:** What I'm trying to get at is, we're talking very simple pieces here. There may be argument about the scale; maybe we could say transmission costs were \$200 million, not your number, but \$200 million is not a number that was admitted by the government previously. The gas management charges—that's pretty standard in the industry, to understand the cost, the scale and the importance. You may find someone who disagrees with you on that, but that's a big charge, and it's one that's going to have to be recognized when we talk about this relocation cost.

**Mr. Bruce Sharp:** Certainly the gas management really jumped out at me, because that was an item discussed in the MOU related to the settlement agreement. That was something I saw immediately as a potentially big number that looked fairly innocuous within the document. Then, on the transmission front—just from a general logic standpoint—everyone knew that the whole idea behind putting the generation there in the beginning was, if you don't have generation, then you're going to need transmission to fix the problem.

**Mr. Peter Tabuns:** I think in the course of Mr. Delaney's questioning, it became pretty clear you don't have a material interest in any of the parties that were part of this, and that you put forward an analysis to make it clearer to the public what we were actually spending and not spending.

**Mr. Bruce Sharp:** Correct. I just have a general desire for things to be transparent, and for things that I feel should be in the public realm to be in the public realm. I think disclosure of these types of things goes a long way to shining a light on policy and political decisions, so that we can, hopefully, learn from them.

**Mr. Peter Tabuns:** Okay.

**The Chair (Mr. Shafiq Qaadri):** A minute and a half, Mr. Tabuns.

**Mr. Peter Tabuns:** A minute and a half? Oh, good. Thank you, Mr. Chair.

In the course of your work on gas systems, have you seen any other circumstance where the gas transmission cost has been taken over by the government from a power provider?

**Mr. Bruce Sharp:** I haven't seen that. I have a general sense that because it is such a big number, it is something that more and more project developers in Ontario would like to see offloaded. It is a number that some of those developers might have been a little bit surprised by when they were working on developing their projects and putting in competitive bids and the like, early on in the process.

**Mr. Peter Tabuns:** So, in fact, this is a huge benefit to TransCanada Enterprises. One might even see it as a payment to them for all the inconvenience they went through.

**Mr. Bruce Sharp:** Well, it's a huge benefit to them. I can't comment on how it might be portrayed.

**Mr. Peter Tabuns:** Fair enough. But it would be a very huge benefit at \$300 million. Is that the low end of your estimate?

**Mr. Bruce Sharp:** I wouldn't say it's necessarily the low end. Really, it is certainly one of those areas—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns. I'll intervene there.

The floor goes now to the government side: Mr. Delaney, 10 minutes.

**Mr. Bob Delaney:** Well, thank you. Chair, I'd like to pass to the witness and, through the Clerk, to the committee a 2010 document called Ontario's Long-Term Energy Plan.

Mr. Sharp, if you have a look at page 44, it has a short section entitled "Future Needs" that talks about upgrading Ontario's infrastructure. In that respect, you'll see that the long-term energy plan called for transmission upgrades in the southwest GTA, regardless of whether or not there's a gas plant there.

In your analysis, you refer to transmission costs, but in reality, back in 2010, those costs were planned and would have been incurred regardless of the relocation. Would that be correct?

**Mr. Bruce Sharp:** It sounds like that's what the document is saying. I really can't comment on how the decision to move the plant would have impacted that.

**Mr. Bob Delaney:** Given the depth of your analysis, had you read Ontario's Long-Term Energy Plan prior to this?

**Mr. Bruce Sharp:** Yes.

**Mr. Bob Delaney:** Okay. So have you actually read this document?

**Mr. Bruce Sharp:** This document?

**Mr. Bob Delaney:** This document.

**Mr. Bruce Sharp:** Yes.

**Mr. Bob Delaney:** Okay. All right. So again, going back to your own numbers, I think you'd agree with me that your estimate isn't necessarily right. I think you've done your best to be accurate, but by necessity you've based your calculations on some conclusions and assumptions that, throughout your testimony, even you have admitted—you know, you say that in various times, you ballparked the number; that you've done a fairly rudimentary analysis; that this is the general technical route. So this is in fact your estimate, correct?

**Mr. Bruce Sharp:** Correct.

**Mr. Bob Delaney:** Okay. Why are your estimates different from those of other experts who have weighed in on this subject?

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**Mr. Bruce Sharp:** I'm not familiar with what experts you're talking about.

**Mr. Bob Delaney:** For example, your estimates are different with other experts who were directly involved in the project and might be in a better position to derive their estimates from accurate figures.

**Mr. Bruce Sharp:** Can you tell me which other opinions you're referring to?



**Mr. Bob Delaney:** Okay. I'm sure you're aware that the Auditor General is already reviewing the relocation of the Mississauga gas plant. You're probably also aware that it was the Premier who asked him to expand his review to include the Oakville gas plant.

**Mr. Bruce Sharp:** Yes.

**Mr. Bob Delaney:** You would support both of those decisions, I hope?

**Mr. Bruce Sharp:** That the Auditor General is going to look into those two things?

**Mr. Bob Delaney:** Yes.

**Mr. Bruce Sharp:** Yes, definitely.

**Mr. Bob Delaney:** Okay. So, in your opinion, do you believe that the gas plant should still be sited at its original location in Oakville?

**Mr. Bruce Sharp:** Well, I think if we could unring the bell—

**Mr. Bob Delaney:** I'm sorry. Again?

**Mr. Bruce Sharp:** If we could unring the bell to have avoided all this issue in the first place—moving it to Lennox, the added costs and everything else—I would still support putting it in Oakville—

**Mr. Bob Delaney:** OK.

**Mr. Bruce Sharp:** —with the caveat that I would say, “What is the latest view on the correct siting from the Ontario Power Authority and its power system planning people?”

**Mr. Bob Delaney:** That's fine. You said earlier, and I'm going to use your own words, that the OPA has a very capable power plant siting group. You also said that they, referring to the two power plants, “were sited there very deliberately.”

So again, to refer to the Oakville and Mississauga power plants, in your opinion, both plants should be sited where they were originally planned by the OPA?

**Mr. Bruce Sharp:** Yes.

**Mr. Bob Delaney:** Okay. Thank you.

You've been in the field a while, by your own admission, so you're aware that there are a lot of different factors that determine where a plant such as either Oakville or Mississauga should be located, such as population forecasting, electricity demand, conservation initiatives, transmission availability, existing infrastructure. Correct?

**Mr. Bruce Sharp:** Sorry: Do I have expertise in all of those areas—

**Mr. Bob Delaney:** No. I'm saying that—

**Mr. Bruce Sharp:** —or am just generally familiar with those factors?

**Mr. Bob Delaney:** —such things are factored in.

**Mr. Bruce Sharp:** Yes.

**Mr. Bob Delaney:** You factored population forecasting into—

**Mr. Bruce Sharp:** No, I didn't factor any of those things into my analysis.

**Mr. Bob Delaney:** Electricity demand?

**Mr. Bruce Sharp:** No.

**Mr. Bob Delaney:** Conservation?

**Mr. Bruce Sharp:** No.

**Mr. Bob Delaney:** Transmission availability?

**Mr. Bruce Sharp:** No.

**Mr. Bob Delaney:** Mississauga's and Oakville's existing infrastructure?

**Mr. Bruce Sharp:** No.

**Mr. Bob Delaney:** Okay. Thank you. So would you agree that if a decision is made and one of these key factors changes, it might be fair to revisit the decision?

**Mr. Bruce Sharp:** Yes.

**Mr. Bob Delaney:** Thank you.

Should a community have any input into any of these decisions?

**Mr. Bruce Sharp:** I think a community should have some input into any type of electricity infrastructure that is envisioned for their area and for any type of generation, whether it be a gas plant, renewable energy or transmission.

**Mr. Bob Delaney:** If a town like Oakville or a city like Mississauga has a previously published official plan, should the official city or town plan be taken into account when such factors as the siting of a power plant are considered?

**Mr. Bruce Sharp:** I can't speak for how the OPA's power system planning function go about collecting information, but that's certainly a piece of information that I think would be worth referencing.

**Mr. Bob Delaney:** Okay. If such a project isn't compatible with the town or city plan, should the city be able to intervene prior to a decision being made and say, “We have a published town plan,” or city plan, “and therefore this isn't compatible with it”? Would you agree with that philosophy?

**Mr. Bruce Sharp:** I don't think I'm going to answer that just because it's well outside my area of expertise to talk about what rights or how much say a municipality should have over power system planning and siting decisions.

**Mr. Bob Delaney:** Okay. Which of the three entities should bear the most weight in the location of a power plant: the city or town, through its official plan, the Ontario Power Authority or the Ontario Municipal Board?

**Mr. Bruce Sharp:** Again, I don't really feel fully qualified to answer the question. I just think that we shouldn't lightly dismiss the siting decisions made by the OPA.

**Mr. Bob Delaney:** Should the Ontario Municipal Board be able to override a decision by either the Oakville town council or the Mississauga city council?

**Mr. Bruce Sharp:** That's well outside my area of expertise.

**Mr. Bob Delaney:** That's fine. All I wanted to ask is your opinion on that.

Okay, I'd just like to run a couple of quotes by you and get a reaction from you.

**The Chair (Mr. Shafiq Qaadri):** About a minute left.

**Mr. Bob Delaney:** Okay. Ted Chudleigh, the PC member from Halton, said: “The people of Oakville have told you they don't want the proposed gas-fired power plant ... and I agree with them.” Then, on October 19, he said: “I was pleased when it was cancelled.”

Would you agree with Mr. Chudleigh?

**Mr. Bruce Sharp:** Do I hold the same opinion as him, that—

**Mr. Bob Delaney:** Would you agree with his opinion?

**Mr. Bruce Sharp:** I think it's unfortunate that it was cancelled.

**Mr. Bob Delaney:** Okay. Chair, thank you very much, and Mr. Sharp, thank you very much for having come in and for very carefully answering my questions.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney.

Final round of questioning to Mr. Wilson.

**Mr. Jim Wilson:** Thank you, Mr. Sharp, very much for coming and for sharing your expertise with us.

Just going back to the history of the Mississauga plant: As you know, I served as Minister of Energy from October 1997 to April 2002. I recall being asked many times by, first of all, Ontario Hydro, and then later, when we set up OPG, to build the plant in Mississauga. I'm just wondering if you have a comment that it would be fair to say that the Ontario PCs during our entire eight years in office, from 1995 to 2003, refused to build the plant in Mississauga.

**Mr. Bruce Sharp:** Well, we certainly didn't have any new plant after the Lakeview closure and everything, so I would say that's accurate, given that we don't have a plant. I can't exactly comment.

**Mr. Jim Wilson:** But you would maybe recall that in the industry it would be known that OPG would be asking the government to build a plant in Mississauga because of the need.

**Mr. Bruce Sharp:** Generally, yes. I think if we had a gas plant built on the old Lakeview GS site, none of this Mississauga-Oakville-plant-moving discussion would have ever happened.

**Mr. Jim Wilson:** Right. And on Oakville, I don't recall during our—you can comment on this or not—eight years ever being asked to build the Oakville plant. I recall that coming after 2003. Do you have any comments on that, what the history might have been on asking the government to build that plant?

**Mr. Bruce Sharp:** No.

**Mr. Jim Wilson:** Okay.

**Mr. Rob Leone:** Thank you, Mr. Sharp, for your testimony. I want to take aim at what I consider the line of questioning from Mr. Delaney, in the sense that he was trying to trick you, in effect; the mean-spirited and vindictive way—

**Mr. Bob Delaney:** Chair?

**The Chair (Mr. Shafiq Qaadri):** Mr. Delaney.

**Mr. Bob Delaney:** Chair, I don't believe that the member is allowed to ascribe motives to me or to any other member, which is apparently exactly what he's doing.

**The Chair (Mr. Shafiq Qaadri):** Your point of order is well taken, and I would invite all members of the committee to adopt parliamentary language and tone. Thank you.

Mr. Leone?

**Mr. Rob Leone:** Thank you, Mr. Chair. Mr. Fedeli previously cited the transmission costs for the Oakville

plant in a document that was in the first tranche of documents that were dumped. It came out in 2009, and the estimate at that time was \$200 million. We know that Ontario's Long-Term Energy Plan was printed in 2010. So is it entirely possible that the government accounted for the transmission costs when they were coming up with the long-term energy plan in 2010?

1100

If you need some help answering that question, I'll point you to page 44, where it states clearly that "a transmission solution to maintain reliable supply in the southwest GTA will be required," and page 34, which says that because Oakville is no longer going to be required, "a transmission solution to maintain reliable supply in the southwest GTA will be required."

On account of that, do you believe that you're fully justified in adding transmission costs to your analysis?

**Mr. Bruce Sharp:** I am just looking for the second reference that you mentioned here.

**Mr. Rob Leone:** Page 34; it's about the third paragraph. "However, a transmission solution to maintain reliable supply in the southwest GTA will be required." They've accounted for your \$200 million in this document that came afterward. That's all I'm asking.

**Mr. Bruce Sharp:** I will say that the reference on page 34 seems to relate not building the plant in Oakville with having to spend money on transmission. There's not an absolute concrete connection there, but you can infer it.

**Mr. Rob Leone:** Thanks. So you've stated that the Ontario Power Authority had more expertise to assess the costs of the cancellations of these plants. That was essentially what you said earlier today.

**Mr. Bruce Sharp:** That's my sense of it, yes.

**Mr. Rob Leone:** The OPA knew the costs, we believe. They stated in a press conference here at Queen's Park that the costs were much higher than the government was talking about. Do you believe that the OPA frequently converses with the Minister and Ministry of Energy with respect to things that are going on in the energy sector on a frequent basis? Would you be of that opinion?

**Mr. Bruce Sharp:** I'm not sure I can really fully comment on that. I would believe—or just assume, maybe—that at the staff level there's a level of communication between the OPA and the Ministry of Energy, but I can't really comment specifically on what the Minister of Energy knows at any given time or who's speaking to whom.

**Mr. Rob Leone:** Do you believe that the government's insistence that the Oakville cancellation costs only \$40 million to be a true statement? In your professional opinion.

**Mr. Bruce Sharp:** No, I don't think that's accurate.

**Mr. Rob Leone:** So if you believe that, would you agree then that the government is still hiding the true costs of the cancellation of the Oakville plant?

**Mr. Bruce Sharp:** I wouldn't want to portray it that way. I would just say that I think the public deserves to know the accurate costs.



**Mr. Rob Leone:** So in saying, though, that we don't have the full costs, one can infer that the truth still hasn't been told with this story, on the government's account—in your view.

**Mr. Bruce Sharp:** I don't want to make a judgment like that. Again, I would just go back to saying that whenever something like this happens, the public deserves to know the full story and have accurate numbers as part of that full story.

**Mr. Rob Leone:** Okay. In terms of the release of the 56,000 pages of documents that we've seen so far, you yourself have seen, I'm assuming, some of those documents in the course of your analysis. You will know that there were blacked-out portions in those documents, information that was removed. Do you believe that some of the information that was removed in those documents would have helped in your analysis to come up with the true cost or even greater cost if those costs are there?

**Mr. Bruce Sharp:** I think it's possible. I think that the bigger barrier to getting good information out of those documents was the volume and the general level of disorganization in the documents.

**Mr. Rob Leone:** So you would believe that a proper analysis of the true costs would be in a much more tabular form—in a spreadsheet, for example—that they could've at least released something like that that would actually enumerate the true costs rather than going through 56,000 pages?

**Mr. Bruce Sharp:** To evaluate the cost of these two moves with more accuracy and greater certainty, the information you need would probably be contained in 10 pages.

**Mr. Rob Leone:** How long is your analysis?

**Mr. Bruce Sharp:** It's really just some discounted cash flow analyses after looking at some of the individual elements. If you were to document it in a report with two or three spreadsheets, the whole thing would be under 10 pages itself.

**Mr. Rob Leone:** So do you believe that the 56,000 pages that we've received have created a smokescreen,

let's say, on individuals like yourself, trying to find out exactly what the true costs are? And let's be clear: We, as the estimates committee—I sat on the estimates committee—actually requested a costing document that we haven't received yet.

**Mr. Bruce Sharp:** As I mentioned, the nature of the documents that have come out really make it challenging to pull the information out of it.

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Bruce Sharp:** Certainly before the document dump was searchable, I had very little interest in sifting through it. Even when it's searchable, I haven't necessarily seen a full searchable form and done a lot of searching myself. So it's a big barrier.

**Mr. Rob Leone:** So in your view, that's basically obstructing your work of trying to provide some transparency and knowledge to the public?

**Mr. Bruce Sharp:** I wouldn't want to call that obstruction. I'm just saying it makes it—

**Mr. Rob Leone:** Well, I'd call it obstruction. You can agree.

**Mr. Bruce Sharp:** —highly, highly challenging. It makes it highly, highly challenging.

**Mr. Rob Leone:** Okay. At the end of the day, what we're seeking is the same thing that you were seeking, which is a bit of honesty from this government, a bit of openness and transparency, something that they've refused to provide and we have yet to see.

I want to thank you for taking the time to join us today in committee to let us know, given your immense expertise and interest in this field, what exactly you know in this area, despite some of the—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Leone. I'd like to intervene on behalf of the committee and thank you, Mr. Sharp, for your testimony and presence today.

I just announce that we have a subcommittee meeting in 20 minutes. Until then, the committee is officially adjourned until 8:30 a.m., Tuesday, March 19.

*The committee adjourned at 1107.*







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**Official Report  
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(Hansard)**

Tuesday 19 March 2013

**Journal  
des débats  
(Hansard)**

Mardi 19 mars 2013

**Standing Committee on  
Justice Policy**

Members' privileges

**Comité permanent  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE POLICYCOMITÉ PERMANENT  
DE LA JUSTICE

Tuesday 19 March 2013

Mardi 19 mars 2013

*The committee met at 0832 in room 151.*

## SUBCOMMITTEE REPORT

**The Chair (Mr. Shafiq Qaadri):** Chers collègues, j'appelle à l'ordre cette séance du Comité permanent de la justice. Dear colleagues, I call to official commencement the meeting of the justice policy committee. You can tell I'm not adequately caffeinated yet. In any case, I'd invite Mr. Tabuns to please move the subcommittee report.

**Mr. Peter Tabuns:** Thank you, Mr. Chair. Your subcommittee on committee business met on Wednesday, March 13, 2013, to consider the method of proceeding on the orders of the House dated February 20, 2013, and March 5, 2013.

(1) That the Clerk of the Committee schedule one witness per each 95-minute time slot.

(2) That any changes to the witness lists must be sent to the Clerk of the Committee no less than seven calendar days prior to the date the witness is scheduled to appear. Following receipt of the changes, the Clerk of the Committee shall forward the revised witness list to the members of the subcommittee.

(3) Each party shall have no more than five names on their prioritized witness lists at any one time.

(4) That the Chair has the authority to determine approval of the reimbursement of reasonable travel expenses incurred by witnesses.

(5) That the Clerk of the Committee, in consultation with the Chair, be authorized to commence making any preliminary arrangements necessary to facilitate the committee's proceedings prior to the adoption of this report.

I move that the subcommittee report be adopted.

**The Chair (Mr. Shafiq Qaadri):** Thank you. Any comments? All in favour? All opposed? The subcommittee report is therefore carried as read.

**Mr. Peter Tabuns:** And Chair?

**The Chair (Mr. Shafiq Qaadri):** Yes, Mr. Tabuns.

**Mr. Peter Tabuns:** I need to make two research requests: One, that we have biographies prepared by research for each witness to come before us, and a chronology of events in the case of the Oakville gas plant and the Mississauga gas plant.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns.

Do you need some clarification?

**Ms. Karen Hindle:** Mr. Tabuns, I just have a question of clarification. How far do you want to go with the timeline? Do you want to go up until the point that—

**The Chair (Mr. Shafiq Qaadri):** I'll tell you what: Why don't we decide that off the committee time. You're welcome to just—

**Mr. Peter Tabuns:** That's fine.

**The Chair (Mr. Shafiq Qaadri):** —consultation on that. That sounds like a debate and a half in itself.

## MEMBERS' PRIVILEGES

MR. ROB BURTON

**The Chair (Mr. Shafiq Qaadri):** We have our first witness to please come forward, Mr. Rob Burton.

Before I do so, as you know, as you've just mentioned in the subcommittee report, Mr. Tabuns, all witnesses are invited to make a five-minute opening address. The honourable mayor of Oakville, Mr. Burton, has asked respectfully to have a 10-minute opening address. Don't ask me how we'll absorb the time, but is that suitable to the committee: 10 minutes? Speak now or forever hold your peace. I'll take that as agreement.

So, Mr. Burton, I'd invite you to please come forward and be affirmed. Please be seated. You're welcome to introduce your colleagues, but before doing so, you need to be sworn in, so I'd invite our Clerk, Ms. Pomanski, to do so.

**The Clerk of the Committee (Ms. Tamara Pomanski):** Do you solemnly swear that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

**Mr. Rob Burton:** I do.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Burton. You are invited to introduce your colleagues, and your official 10 minutes—

**Mr. Rob Leone:** Chair?

**The Chair (Mr. Shafiq Qaadri):** Yes, Mr. Leone?

**Mr. Rob Leone:** Just for clarification, we all are going to have our same amount of time to ask questions of the witness?

**The Chair (Mr. Shafiq Qaadri):** Yes. I haven't processed quite that far, but I was planning on absorbing the 1.66 minutes each of the party, which was using up the five minutes mathematically, but if you can do without it, it will save time.

**Mr. Rob Leone:** I would not be in favour of the extra five minutes if that's the case—just to put that on record.

**The Chair (Mr. Shafiq Qaadri):** That's fine. Duly noted.

Mr. Burton, you have 10 minutes.

**Mr. Rob Burton:** Would you like me to introduce my colleagues first?

**The Chair (Mr. Shafiq Qaadri):** I would like you to inspire us all.

**Mr. Rob Burton:** Committee, I'm here with the chief administrative officer of the town of Oakville, the commissioner of planning and my chief of staff: Mr. Ray Green, Ms. Jane Clohec and Mr. David Brennan.

This is my statement. We are here to share with you the town of Oakville's experience with the proposed TransCanada 900-megawatt power plant in Oakville. This proposed plant never got the municipal planning approvals that it needed to proceed to construction. Here's why: In March 2009, council passed an interim control bylaw. This gave town planning staff time to develop appropriate planning rules for council to enact for where power plants can go in Oakville. This is what an interim control bylaw is for: to enable good planning and hold back land uses you don't have rules for until you have the rules ready. This was six months prior to the Ontario Power Authority's September 2009 selection of TransCanada's proposal to locate a 900-megawatt power plant adjacent to residential neighbourhoods in southeast Oakville—and I do mean adjacent.

If you'll look at the graphic we've prepared, you'll see it was adjacent to more than 3,000 homes, nine schools, a hospital, a long-term-care centre, the QEW and the region's busiest commuter rail corridor, all within 1,500 metres of the site. The proposed site was closer to homes than the province allows a wind turbine. Turbines have to be 550 metres from homes etc. There are very real risks associated with being so close to a large gas-fired power plant. The explosion at a similar-sized power plant in Connecticut in February 2010 killed six people and injured 50 others. The explosion was so powerful, it knocked out windows six kilometres away. When I heard of the explosion, I said a prayer of thanks that Oakville council had acted to ensure that we could develop good planning rules to protect our homes and schools from such danger.

Just last year, a Via train derailed in Burlington on the same rail corridor on which the proposed power plant site was located. Not by any means was this the only train derailment in this busy rail corridor.

Oakville residents were astonished that anyone could put such a large and dangerous power plant so close to homes and schools. There was an overwhelming consensus in Oakville that, from a planning perspective, the proposed power plant site made no sense; from a community safety perspective, the proposed power plant made no sense; and from an air quality perspective, the proposed power plant made no sense.

Air quality was of particular concern in our area because the province had already identified our airshed

as a vulnerable, overtaxed airshed. There was no room in our airshed for the amounts of carcinogenic fine particulate matter, or what we call PM<sub>2.5</sub>, that would be generated by this proposed power plant.

0840

The Municipal Act is quite clear. It is the responsibility of local government to protect environmental well-being and the health, safety and well-being of our residents.

For 18 months, council and I worked closely with our staff and our community to address the safety and planning concerns, and to highlight the need for provincial action to improve air quality in the Oakville-Clarkson airshed. Since there is no legislation in place to control PM<sub>2.5</sub> emissions in Ontario, Oakville passed Canada's first municipal health protection air quality bylaw. We wanted to deal with the health concerns related to direct emissions of fine particulate matter and the precursor substances that become particulate matter.

This initiative was based on our well-documented and long-standing track record of concerns about local air quality. The health protection air quality bylaw does what no higher level of government has been willing to do: It regulates the emission of PM<sub>2.5</sub>, and it remains in effect today.

Our citizens continue to look to our local government to take a leadership role in enhancing and protecting their health, safety and livability, even if that means we must, from time to time, challenge our provincial or federal counterparts.

Our citizens organized their own effort to ask the province to rethink the proposed power plant. Citizens for Clean Air, or C4CA, led the public opposition in Oakville to the plant. They worked diligently with Oakville MPP Kevin Flynn to bring the need for standards for the safe location of power plants to the attention of the public and the province. They won promises from all parties to stop the proposed power plant.

Oakville legislators at the local, regional, provincial and federal levels were all clear about this matter. Oakville council and staff worked to develop evidence-based rules to protect the health and well-being of our citizens through scientific, regulatory and planning research.

At last, in September 2010, council adopted an official plan amendment and a zoning bylaw amendment. These created land-use planning policy and required technical studies that applicants must provide to allow evidence-based assessment of any proposed power plant's suitability. These rules would permit power plants to locate in Oakville, if you care to make them safe and put them where they do no harm.

Then, in October 2010, the province announced the proposed power plant would not go ahead in Oakville. We were, and we are, very thankful for that decision. We believe that the costs to cancel the proposed power plant are far less than the health, safety and environmental costs it would have caused our community.

As local government, we did our duty under the acts of the Legislature that govern us. They require us to



respond in a way that is well researched, well documented, well reasoned and responsive to the concerns of the vast majority of our residents.

To quote the Ontario Municipal Board, when it upheld our interim control bylaw, we did exactly the right thing at exactly the right time and for exactly the right reasons.

Thank you very much.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mayor Burton.

We now have 30 minutes—or a 20/20/20-minute rotation followed by a 10/10/10-minute rotation, beginning with the government side. Mr. Delaney.

**Mr. Bob Delaney:** Mr. Del Duca will start off.

**The Chair (Mr. Shafiq Qaadri):** Mr. Del Duca.

**Mr. Steven Del Duca:** Thank you very much, Mayor Burton, for being with us here today and for your thoughtful opening statement. I listened carefully to what you said in your opening.

I would begin by asking, do you believe the provincial government made the correct decision when it decided to relocate the Oakville gas plant?

**Mr. Rob Burton:** Yes, I do.

**Mr. Steven Del Duca:** You talked, obviously, about the great advocacy work and a lot of the stuff that the community and you and the council did in respect to pushing, from your perspective. Would you characterize the provincial government's decision as one in which the people of your community were listened to by the provincial government? Is that the perspective?

**Mr. Rob Burton:** The people of my community, in their organization and in their local government, worked hard to develop an evidence-based opposition to the power plant. We wanted to make sure that a fact-based set of arguments was available to help the government understand that it was the wrong place. We didn't want to appear NIMBY in any way. In fact, that's the reason I stressed in my statement that under the rules that we eventually were able to devise, you could still put a power plant in Oakville as long as it did no harm and as long as you took care to make sure that it was safe.

We were very pleased when the government listened to the evidence that we had assembled. Frankly, we're still, all across the town, very grateful.

**Mr. Steven Del Duca:** You did mention that a majority of your residents were opposed to the power plant. Any rough estimates as to what kind of percentage of your community was opposed?

**Mr. Rob Burton:** We had an 18-month process. We pride ourselves, in Oakville, on a public process with lots of public consultation. I don't remember a single delegation from a resident showing up at any of the many meetings arguing that we should have the power plant. I don't remember a single one. So, I would say the percentage would be 99.99%.

**Mr. Steven Del Duca:** Thank you. You mentioned in your opening statement, when you talked a little bit about the air quality issues, the studies and some of that stuff. Can you expand a little bit on that? Can you tell us a bit more about your perspective on the air quality impact?

**Mr. Rob Burton:** The sad truth about PM<sub>2.5</sub>, aside from the fact I already alluded to, which is that its emission is not controlled, is that there is no safe level when it's carcinogenic. Our airshed is overtaxed, as the work of the province itself had shown. So, there was quite a concern. We were very impressed that the government heard that concern and appointed the Balsillie task force to investigate and prove up the facts of the airshed. They came up with a report with, I think, 18 recommendations, including one that said that the power plant's emissions could not fit into our airshed.

**Mr. Steven Del Duca:** Okay. Donna?

**Mrs. Donna H. Cansfield:** Thank you very much, Mayor, for coming in and chatting with us and sharing. One of the things that I think is very evident is that the siting is a really important issue. I was particularly impressed by that bylaw that you put in place dealing with PM<sub>2.5</sub> and the fact that you put a health protection bylaw in. I don't think I've ever heard of another municipality doing that, and I wondered if in fact it could be a template—I'm in the same airshed. That whole airshed study that was done years ago by environment and then subsequently by Balsillie speaks to the whole issue around carcinogens. I wonder, when you looked at that bylaw, do you think that that kind of a bylaw could be applicable for other municipalities or even the OPA in terms of helping them in siting?

**Mr. Rob Burton:** Yes, I do. The province has been led by the Ontario Medical Association for many years—more than 13; it goes back to the 1990s—pointing out the health burden of air pollution in the province. They quantified the number of premature deaths from air pollution in Ontario. They've made that software available to municipalities. We've used it in Halton region on the health and social services side, which is part of our mandate in that part of our municipal corporation, to quantify that there's an excess death toll in Halton from air pollution of 330 a year. The death toll from pollution, not to speak of the illness toll but death, surely is something that commands our work and our attention—there's a penalty in death and illness all across, not just in Halton. There are thousands across Ontario.

We believe our response to the threats posed by that proposed power plant can and could be a model for others who face such a threat. But I want to stress that everyone in Oakville joins me in hoping that no other community ever has to face such a threat to their safety and well-being.

**Mrs. Donna H. Cansfield:** The lessons learned—because there's no one here that doesn't acknowledge that the plant should not have been built there. How do we move on and make sure that the lessons you've put in place—or the applications you've put in place because of what you did for 18 months. How can we, as a government, and how can the OPA learn from your experiences so that, again, we have proper siting? What do you think we could draw out of this that could make a significant difference to the OPA in terms of their contractual obligations for siting?



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**Mr. Rob Burton:** About half of the States have a method of siting gas power plants that involves objective, evidence-based public hearings. I used to believe that that would be the easiest way for Ontario to get this procedure on a sounder footing, but I recently heard that the Premier has suggested that instead she favours—if I understand this correctly—local energy supply plans, and each community would be able to decide for itself whether it wanted to host a power plant. I've had conversations with the leader of one of the opposition parties, who has assured me, again and again, that his policy would be, "We will only use willing hosts," I think was the expression that he used with me—Mr. Hudak did. To a degree, those two positions, from my perspective, appear to be very similar, so perhaps there's an agreement available there, and that might be easier and less cumbersome than copying and pasting the process that they use in the States.

When I first suggested the American model, it was suggested to me that that would prevent any power plants from being built anywhere, and I pointed out that the model I favour is California's, and they've built 50 of these things and they haven't had any of the trouble that we've had doing it. So we don't have to do it this way. We could do it a better way. I think either of these would be a better way. Frankly, some days I've felt any way would be a better way than we did it.

**Mrs. Donna H. Cansfield:** Thank you. So then did you also look at the whole issue around distributed energy, smaller plants in a variety of places as opposed to one large one, when you were giving some consideration, given your airshed? That's what they use in Europe a lot, the whole distributed energy process, as opposed to the big mega plants of 900 megawatts. Was that part of your consideration at all in your planning as you move forward with Oakville?

**Mr. Rob Burton:** I personally favour a much more distributed model that's heavy on green energy. My community has tried to be a leader in creating green energy projects, not just in Oakville but around the province. In the end, I believe that everybody in Ontario would like a government that respects local preference.

**Mrs. Donna H. Cansfield:** Thank you. I appreciate your candid comments.

**The Chair (Mr. Shafiq Qaadri):** Ten minutes.

**Mr. Steven Del Duca:** Mayor Burton, you mentioned in your opening statement that over the course of the 18 months there was a great deal of advocacy and outreach that you did with respect to talking to all levels of government. Can you elaborate a little bit on that, how you reached out to the various levels of government?

**Mr. Rob Burton:** Well, I can't really speak for C4CA, and I understand that you may be speaking to them. They certainly had an extensive program of outreach. The way we chose to work was to do our duty. We wanted to follow our responsibilities under the acts that the Legislature has given us, the Municipal Act and others, and we figured that the information that we

generated and the sound planning policies that we developed would be noticed and appreciated by the province, and indeed I do believe that the two main measures we took, the health protection air quality by-law, and I'll call it the do-no-harm planning rules, were noticed by the government in helping them come to a decision to stop the power plant.

**Mr. Steven Del Duca:** So in your conversations with politicians from other levels of government, I'm assuming you would have spoken to members of both provincial opposition parties?

**Mr. Rob Burton:** I did speak with anyone who would speak to me and I don't remember being turned down by anyone. I was very impressed with the work of C4CA in winning promises to stop the power plant from every party.

**Mr. Steven Del Duca:** I have a quote in front of me from June 1, 2010, from Ted Chudleigh, the Progressive Conservative member from Halton, and the quote says, "The people of Oakville have told you they don't want the proposed gas-fired power plant ... and I agree with them." Then on October 19, 2010, he said, "I was pleased when it was cancelled."

An additional quote: On October 7, 2010, NDP MPP Peter Tabuns told Inside Halton, "I don't agree with the Oakville power plant." On December 2, 2010, NDP MPP Michael Prue stated, "I'm glad the people of Oakville hired Erin Brockovich and did all the things that they did in order to have this killed."

Based on these statements and based on the work that you and your community did, do you think we can agree that all three provincial parties would have cancelled the Oakville plant?

**Mr. Rob Burton:** In Oakville, we certainly believed that we had those promises and that we could rely on them from all three parties. I want to say that I understood, in Mr. Tabuns's case, that he had a similar experience with another power plant at another time, so I felt that he had an extra reason to identify with us in our struggle. So yes, we felt supported by all parties.

**Mr. Steven Del Duca:** At the federal level, I do have a quote from a letter from Terence Young, the member of Parliament for Oakville, who happens to be a Conservative—a letter that was sent to the Premier at the time on October 15, 2009: "I enclose 133 petitions signed by Oakville residents opposed to the proposal; I have also received innumerable phone calls and emails from those who share these concerns. I have lived in Oakville for 27 years, four of those as MPP for Halton Centre, and have never seen an issue which has been of such concern to Oakville residents."

We also have a quote from Mr. Larry Scott, the Ontario PC candidate in the 2011 provincial election, agreeing with Mr. Young's opposition to the power plant. He stated clearly in 2009, "I think, the correct way for this to go is" for it "not to be built."

Ultimately, just to get this clear, this is not simply an Ontario Liberal Party issue; the Oakville power plant was opposed by all three parties at different levels of governments, from your experience. Is that correct?



**Mr. Rob Burton:** Yes, it is, and I alluded to that when I said that the legislators from Oakville at every level were united in opposing the power plant. Really, Oakville was very encouraged by the fact that all three parties were so responsive to our concern.

**Mr. Steven Del Duca:** Not to overburden you with quotes, but I do have one more, and it's actually from you. It's from September 25, 2012. You stated, "Since all parties promised they would stop the power plant, I'm not sure (the cancellation) could have been done better or cheaper." I'm wondering if you could tell the committee: Would you still agree with that statement?

**Mr. Rob Burton:** I do agree with that statement. Anyone who wishes to criticize the cost of cancelling it would do everybody a favour if they would explain how they would have done it differently. That would advance public consideration of the matter, I think, in a rational and evidence-based way.

I actually began my statement to you this morning—and I'll read it again: "This proposed plant never got the municipal planning approvals that it needed to proceed to construction." When it got any money, I was a little taken aback by that.

**The Chair (Mr. Shafiq Qaadri):** Mr. Delaney.

**Mr. Bob Delaney:** Mayor Burton, what were some of the actions by the proponent in the matter of the construction of the power plant?

**Mr. Rob Burton:** I'm not sure how to answer that question.

**Mr. Bob Delaney:** Did they choose to oppose the decision of town council? Did they involve the Ontario Municipal Board? How did town council proceed in its dealings with the proponent?

**Mr. Rob Burton:** TransCanada appealed our interim control bylaw to the Ontario Municipal Board.

*Interjection.*

**Mr. Rob Burton:** Oh, but he's asking me about TransCanada.

Of course, the Ontario Municipal Board upheld our interim control bylaw.

Sorry, I'm distracted by the bells. I don't know how you guys manage it. It must be a tradition.

**Mr. Bob Delaney:** Yes, it isn't just a ringing in your ears.

Could you walk us through some of the things that happened around the appeal to the Ontario Municipal Board and what efforts Oakville town council had to make to make that point with the OMB?

**Mr. Rob Burton:** I really can't. It was, from our perspective, a fairly normal Ontario Municipal Board experience. We were well prepared. We had a solid planning basis for our actions. We were quite confident in the result, and the board upheld us.

0900

**Mr. Bob Delaney:** Okay.

**Mr. Rob Burton:** It was a ringing endorsement, I thought. That's why I like that quote—exactly the right thing, exactly the right time for exactly the right reason.

**Mr. Bob Delaney:** Okay. In the last two or three minutes, is there anything else you would like to add?

**Mr. Rob Burton:** No. I want to thank the Legislature for giving Oakville the opportunity to add what we can to your deliberations. I hope our facts have some use to you. The Legislature is the creator of the municipalities. You write the acts, we obey, and I hope you're pleased that we follow them.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mayor Burton, and thanks to the government side. Now to the Conservative side, to Mr. Yakabuski.

**Mr. John Yakabuski:** Thank you very much, Chair, and thank you very much, Mayor Burton, for joining us today.

Mayor Burton, in your office, is there a term known as the "mayor's magic carpet ride" and what does that mean?

**Mr. Rob Burton:** Well, I'm a man who likes a colloquial expression. We have a history in Oakville of difficulties with developers trying to do differently than our official plan provides for, differently than our community's vision for itself as codified in our official plan. So, to encourage developers to follow our plan, I often use the expression, "If you will conform to Oakville's vision and follow our official plan, we will give you the mayor's magic carpet for your application, and you will have a speedy and careful consideration of your application. If you don't, if you wish to quarrel with our vision or fight our plan, we'll try to make it as interesting for you as we can."

**Mr. John Yakabuski:** So only will they get the mayor's magic carpet ride if they comply with all of Oakville's decisions, not if they comply with the wishes of the mayor?

**Mr. Rob Burton:** It's an expression—look, I'm the servant of the people of Oakville. I'm the head of council and the CEO, as the act describes, and so I figure it's my duty to see to the implementation and carrying out of the will of council, which expresses the will of the people. That's my theory of government in a nutshell.

**Mr. John Yakabuski:** Okay.

**Mr. Rob Burton:** So I refer, when I talk about the mayor's magic carpet, only to—you know, business prefers certainty and speed; I was a businessman, and I think you've probably heard that from business people before. I want to give people the idea that if they will follow the will of the people, expressed through the official plan, as enacted by the council of the town of Oakville, that we'll be co-operative and everything will go well.

**Mr. John Yakabuski:** Thank you. Maybe we'd have to call it "Oakville's magic carpet ride."

**Mr. Rob Burton:** All right.

**Mr. John Yakabuski:** Your Worship, were you always opposed to the Oakville gas plant proposed by TransCanada from the get-go?

**Mr. Rob Burton:** I was always opposed to the proposed power plant. The first difficulty I had with it

was that the last 112 gas-fired power plants built in the United States under President George Bush were cleaner.

**Mr. John Yakabuski:** Were what?

**Mr. Rob Burton:** Cleaner. They had lower emissions—significantly lower emissions—and I couldn't understand why we in Ontario would be second-rate to that.

**Mr. John Yakabuski:** So you're saying, from the get-go, you were always opposed to the proposed plant in Oakville?

**Mr. Rob Burton:** Yes, as proposed.

**Mr. John Yakabuski:** When you were approached by proponents of the gas plant, either the Ontario Power Authority or TransCanada, did you immediately denounce the idea? Did you immediately express opposition to the plant?

**Mr. Rob Burton:** No.

**Mr. John Yakabuski:** No. Did you ever infer that you were open to the idea of locating the plant in Oakville?

**Mr. Rob Burton:** Yes. As a matter of fact, frequently throughout the 18 months, I tried to take pains to express the possibility that it could go in Oakville if it met the conditions that we were developing.

Given the heat of the subject, I don't think I was perfect in trying to withhold judgement at all times, but in the main I'm satisfied that I tried to be open to the possibility that they would meet our concerns.

**Mr. John Yakabuski:** And was there any quid pro quo offered to you from the proponents, should the plant be approved in Oakville, should the council give their blessing? Any offers to assist the city in any way?

**Mr. Rob Burton:** There was a discussion—now that you ask that question, I recall a conversation in which a reference was made to the possibility of a million and a half dollars of community benefits to be sprinkled somewhere in the community.

**Mr. John Yakabuski:** Was that made to you personally or was that made to the council?

**Mr. Rob Burton:** I don't actually recall it being made at council. The time I remember hearing it was in a meeting with me.

**Mr. John Yakabuski:** Right. Do you recall any of the enhancements that Oakville would have received as part of those discussions?

**Mr. Rob Burton:** No.

**Mr. John Yakabuski:** Was one of them a new container terminal?

**Mr. Rob Burton:** I don't recall that. What is a container terminal?

**Mr. John Yakabuski:** Well, you have a container terminal in Oakville now where containers of freight get stored.

**Mr. Rob Burton:** I'm not aware of one. Oh, you mean the truck yard on the other side of the railroad track? No, I don't remember an offer to build a new one of those.

**Mr. John Yakabuski:** No offer to build a new terminal. What about an idea to help Oakville purchase new buses? Was that ever discussed?

**Mr. Rob Burton:** We had a discussion about a concept called offsets where, in stressed airsheds in the United States, proponents remove the amount of pollution they're going to add by—in the San Francisco Bay area, for example, I heard of a power plant that, even though operating as cleanly as technology permitted, still was adding too much particulate matter to the air. So they bought up a bunch of school bus fleets and converted them to propane from diesel in order to reduce the particulate matter from the buses by the amount that the power plant was going to add.

That's a concept that the US EPA promulgates in an overtaxed or an out-of-compliance airshed, as they call it. But I don't remember TransCanada actually offering to do that.

**Mr. John Yakabuski:** Not offering to improve the bus fleet or lower the emissions of the bus fleet in Oakville?

**Mr. Rob Burton:** I don't actually remember that.

**Mr. John Yakabuski:** San Francisco is great, but was there an offer to reduce the emissions from the plant by a commensurate amount of your public transit vehicular fleet? And was that made to council or to yourself?

**Mr. Rob Burton:** I do not recall such an offer being made to me or to council. I do recall, during the 18 months, I said to the press that I thought they should, but I don't remember them offering to do it.

**Mr. John Yakabuski:** Any other enhancements offered by the proponent to the town of Oakville?

**Mr. Rob Burton:** No. The several different ways that you're illustrating to sell the power plant to the town, I don't remember actually being done. They probably should have—maybe they could have hired you.

**Mr. John Yakabuski:** So no offering to improve—to have additional street cleaning or highway cleaning in exchange for allowing the power plant to be located in Oakville?

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**Mr. Rob Burton:** I don't remember that either.

**Mr. John Yakabuski:** You don't remember that either. You don't remember them offering that? Or are you categorically saying it didn't happen?

**Mr. Rob Burton:** Reducing particulate matter from street shoulders was one of the recommendations of the Balsillie report, and I'm wondering if somehow these things have been confabulated together and misremembered. I have no recollection of these things happening. I don't remember any offers like that.

**Mr. John Yakabuski:** Do you recall any conversations, with respect to locating the plant in Oakville, with either TransCanada or the OPA, and can you tell us what might have been discussed that this committee wouldn't be aware of at this point, with respect to what kind of quid pro quo or deals might have made the plant acceptable to you for the town of Oakville?



**Mr. Rob Burton:** I did not receive any offers that would make it acceptable. When I pointed out that the last 112 gas-fired power plants licensed under George Bush were cleaner, neither of those entities offered to match or beat that.

**Mr. John Yakabuski:** So you received offers, but you didn't receive offers that would make it acceptable?

**Mr. Rob Burton:** No, no. They had an application for a given set of turbines, and they seemed determined to use that. I don't know where these offer stories come from.

**Mr. John Yakabuski:** Thank you very much. I'll turn it over to Mr. Leone.

**Mr. Rob Leone:** How much time do I have, Mr. Chair?

**The Chair (Mr. Shafiq Qaadri):** Nine minutes.

**Mr. Rob Leone:** All right.

Hello, Mr. Mayor. Can you tell the committee if you have any political advisers or staff who report directly to you?

**Mr. Rob Burton:** I have several staff who report to me.

**Mr. Rob Leone:** Do you expect your staff to obey your direction and the direction of Oakville city council? Or, as mayor, do you allow your staff to ignore directions of council?

**Mr. Rob Burton:** I'm not sure how to answer a question like that.

My personal style, both at YTV and as mayor of Oakville, has always been to establish a clear policy framework and to try to empower front-line people, and when they use their best efforts to apply the policy framework and make a mistake, to forgive and move on and use it as a learning experience.

To give you an example, at YTV our daily motto was Promote, Promote, Promote, and so if you, as an employee at YTV, made a decision that was consistent with that but we didn't like it, we wouldn't punish you for that. We would correct you, but we would move on, because you were following the prime directive, if you will.

**Mr. Rob Leone:** If you gave your staff an order to provide and produce documents for any reason, and your staff refused or did not or disobeyed that order, what would you do with that staff member? Would you fire them?

**Mr. Rob Burton:** I don't know that that would be a firing offence, unless I knew more about this hypothetical instance.

**Mr. Rob Leone:** How about if they did it three times?

**Mr. Rob Burton:** It would depend. I mean, was it available? Were there reasons why it couldn't be given? I don't really understand your question.

**Mr. Rob Leone:** Sir, we're at this committee because of, obviously, the cancellation of the Oakville gas plant. Part of the issue here is the cancellation and the costs, but the other part of the issue is the fact that the government has consistently disobeyed an order of a standing committee of this Legislature, and in doing so—this is the reason why we're actually calling you as a witness today.

If you were in our shoes asking for documents, and that hasn't been complied with, what would you do? That's what I'm asking.

**Mr. Bob Delaney:** Chair, point of order.

**The Chair (Mr. Shafiq Qaadri):** Point of order. Mr. Delaney.

**Mr. Bob Delaney:** Mr. Burton is not here to speculate; he is here to tell us what he knows.

**The Chair (Mr. Shafiq Qaadri):** That may be entirely true, but it's not a point of order.

Mr. Leone, continue.

**Mr. Rob Leone:** I'm asking, in the case of you and Oakville city council, if your CAO, who is sitting next to you, disobeyed that order, what would you do? Would you be mad? Would you be angry? Would you fire the person?

**Mr. Rob Burton:** First off, I guess I should say Oakville is a city, but we call ourselves a town and we act like a village. We try to treat people with respect, and, certainly, the first thing we would do is ask for an explanation. We would consider the explanation, and proceed accordingly.

**Mr. Rob Leone:** And if it consistently was refused, you wouldn't be angry about that, given that you repeatedly made the same request and it hadn't been complied with? You wouldn't be angry at all?

**Mr. Rob Burton:** I am not really a big fan of anger as a method of management.

**Mr. Rob Leone:** Really? That's good.

**Mr. Rob Burton:** It has never worked for me.

**Mr. Rob Leone:** Thank you for that. I'll leave that line of questioning.

In the weeks leading up to your testimony today, did you have any conversations with people in the Liberal Party or the Liberal government with respect to your testimony today?

**Mr. Rob Burton:** I can't hear you, sir.

**Mr. Rob Leone:** I said, in the lead-up to being called as a witness to this committee, did you have any conversations with any member of the Liberal Party or someone from the government or the OPA about your testimony today?

**Mr. Rob Burton:** I was told by members of the Liberal Party that I would probably be called. The first I heard that I would be called was when Oakville's MPP, Kevin Flynn, told me that I should expect to be called.

**Mr. Rob Leone:** Anybody else?

**Mr. Rob Burton:** No.

**Mr. Rob Leone:** No member of the government at all?

**Mr. Rob Burton:** No.

**Mr. Rob Leone:** Any conversation with political staff?

**Mr. Rob Burton:** No.

**Mr. Rob Leone:** What was the nature of your conversation with Kevin Flynn about the testimony you'd provide today?

**Mr. Rob Burton:** He told me to just tell our story.

**Mr. Rob Leone:** How many times did you have a conversation with Kevin Flynn?

**Mr. Rob Burton:** I speak to MPP Flynn frequently. We have a terrific partnership between the town of Oakville and our MPPs.

**Mr. Rob Leone:** Okay. In the lead-up to the cancellation of the Oakville plant in 2010, you were about to fight a re-election challenge, were you not?

**Mr. Rob Burton:** The municipal election was in late October 2010.

**Mr. Rob Leone:** Yes, but this was a potential election issue for you.

**Mr. Rob Burton:** I declared my candidacy for mayor in April 2010. The official campaign period began immediately after Labour Day on September 2010. The power plant, although it was certainly an item of public concern, was not a municipal election issue.

**Mr. Rob Leone:** So if the plant was not cancelled and had continued to be built, would you have run in that election?

**Mr. Rob Burton:** I believe so.

**Mr. Rob Leone:** Okay. Vic, you want to go?

**Mr. Victor Fedeli:** Oh, thank you very much.

**The Chair (Mr. Shafiq Qaadri):** Mr. Fedeli, two and a half minutes.

**Mr. Victor Fedeli:** Thank you, Chair.

Good morning, Your Worship. When did you first hear that a gas plant was being planned for the village of Oakville?

**Mr. Rob Burton:** There was an RFQ issued by the Ontario Power Authority—I believe it was in 2008. That's how we became aware that there was a power plant intended for the southwest GTA area, which we were informed we were part of.

**Mr. Victor Fedeli:** So that's obviously the point when you told Mr. Yakabuski that you were not against the power plant at the beginning. So, when were you informed of the cancellation of the plant in Oakville?

**Mr. Rob Burton:** There was a news conference—I guess that's the name for it—called in Oakville on or about October 7 or October 6, in the first week of October. I don't remember the exact day—

**Mr. Victor Fedeli:** Of what year?

**Mr. Rob Burton:** Of 2010. It was in a local—  
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**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Victor Fedeli:** Thank you. So you heard of it at the public announcement is what you're saying.

**Mr. Rob Burton:** Oh. We went to this—

**Mr. Victor Fedeli:** At the press conference. You heard of the cancellation at the press conference.

**Mr. Rob Burton:** And we had no idea what to expect.

**Mr. Victor Fedeli:** By that time, you had become against the power plant. Did you or anyone in your office ever speak with any political staff from the office of the Minister of Energy before the cancellation of the gas plant in Oakville?

**Mr. Rob Burton:** We spoke to everybody we could to tell them of our opposition and to tell them of our con-

cerns about safety and our concerns about air quality. I don't recall any particular one.

**Mr. Victor Fedeli:** How much—am I done?

**The Chair (Mr. Shafiq Qaadri):** Ten seconds.

**Mr. Victor Fedeli:** I'll let it go.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli. To Mr. Tabuns.

**Mr. Peter Tabuns:** Good morning, Mayor Burton. Thank you for coming here today. We appreciate it.

Can you tell us how many times you met or talked with the Premier, if indeed you did talk with him, prior to the contract being awarded to TransCanada?

**Mr. Rob Burton:** I was allowed to meet with the Premier once for 15 minutes at AMO.

I don't know how you experience—I mean, you ladies and gentlemen were with him longer than I. You had years; I had 15 minutes. But I was struck by the poker face that the Premier can manifest. I couldn't tell if we were registering anything at all. I couldn't tell whether we generated any sympathy. But he did, subsequent to that meeting, announce the Balsillie task force, which I took as a small ray of hope that some concern about the air quality danger was starting to take shape.

**Mr. Peter Tabuns:** This is prior to the award of the contract. You made it clear to the Premier that there were serious problems with the award of a contract for a power plant at this location.

**Mr. Rob Burton:** Yes. I repeated the George Bush story, hoping that a sense of provincial pride would ensue; you wouldn't build something dirtier than they would build. I didn't have enough time to say everything one might say, so I chose that and our concern about the already deadly level of air quality.

**Mr. Peter Tabuns:** So he was well aware there was a significant air quality problem in this region before a contract was awarded.

**Mr. Rob Burton:** I don't know if he was aware, but he certainly was told. "Aware" to me implies that he believed it, right? But yes, we brought that to his attention.

**Mr. Peter Tabuns:** He was told. The information was available to him.

**Mr. Rob Burton:** Yes.

**Mr. Peter Tabuns:** Did you have other contacts with members of the Premier's office or senior decision-makers at the OPA prior to the contract being awarded?

**Mr. Rob Burton:** Yes, I did.

**Mr. Peter Tabuns:** And, at each occasion, did you inform them that there was an air quality problem and that, in fact, your community fundamentally opposed this proposal?

**Mr. Rob Burton:** Yes, I did.

**Mr. Peter Tabuns:** So they were fully aware that politically, it would be problematic, and that in terms of impact on the public, it would be problematic.

**Mr. Rob Burton:** Yes.

**Mr. Peter Tabuns:** Were you surprised that they went ahead nonetheless?



**Mr. Rob Burton:** Yes. If you'd like some amplification, they had a public consultation at the very beginning of their process for the residents of Oakville. About 150 people came. This public consultation meeting was in Mississauga, but never mind; still 150 Oakvilleans managed to come, and 150 people gave them a very hostile reception. Perhaps the main point of the hostility was the air quality. So certainly they were aware.

**Mr. Peter Tabuns:** And prior to proceeding with this contract, I'm assuming you had discussions with MPP Flynn. From his behaviour in the House, I assume he opposed this from early on. Did you assume that he was taking the message back to his Liberal caucus that this plant should not go forward?

**Mr. Rob Burton:** I did assume that, and he told me that he did.

I'd just like to take you back to that public meeting. There was a very interesting exchange that took place at that meeting that evening that really captured the entire problem. The 150-or-so citizens who were complaining about the air quality issue frustrated the folks from the OPA. At one point, a senior officer of the OPA stood up and said to the audience, and I quote—I was there: "Look, the OPA is not in the business of protecting the environment. We're in the business of building power plants." I've always thought that that was a weakness to their approach.

**Mr. Peter Tabuns:** Who was that person from the OPA who made that statement?

**Mr. Rob Burton:** It was a vice-president. I don't remember his name.

**Mr. Peter Tabuns:** Okay. Can you tell us who in the OPA you met with before this contract was signed?

**Mr. Rob Burton:** I met with several vice-presidents and the president.

**Mr. Peter Tabuns:** So, Colin Andersen, the president; perhaps JoAnne Butler, one of the vice-presidents?

**Mr. Rob Burton:** Yes.

**Mr. Peter Tabuns:** That's correct? So, in your estimation, siting a plant here was a mistake? There was a health risk and there was a political risk?

**Mr. Rob Burton:** And a safety risk.

**Mr. Peter Tabuns:** And a safety risk. Nonetheless, the Liberal government of Ontario proceeded with this plant?

**Mr. Rob Burton:** Yes. It was exactly like we experienced in 2000-01, when the government of that time pushed through approvals for a similarly sized gas-fired power plant on Winston Churchill Boulevard on the edge of Oakville, which was a very frustrating experience too.

**Mr. Peter Tabuns:** So, if in fact they had not made this initial mistake, we would not be here today discussing the cancellation, would we?

**Mr. Rob Burton:** That would be much to be wished for.

**Mr. Peter Tabuns:** I felt the same way at the time and feel the same way today.

The cost that the province of Ontario is saddled with with this cancellation flows from a decision made

through the Liberal government to site this privately owned, large power plant in your community; correct?

**Mr. Rob Burton:** In my view, this flows from a very flawed process for siting or determining the location of power plants. I pray and urge all parties to put your best minds to the problem and come up with a better way that respects safety, health and local communities.

**Mr. Peter Tabuns:** Were you ever told how much it would cost to cancel this plant?

**Mr. Rob Burton:** No, sir.

**Mr. Peter Tabuns:** When you were urging the government—in the course of the period up to the fall of 2010, you were urging them not to proceed—did any authority ever come to you and say, "This is going to cost a lot of money"?

**Mr. Rob Burton:** No. In fact, I stressed that they never got their planning approvals, without which you can't—they didn't get their building permit. I didn't understand how they were eligible for costs, frankly; still don't.

**Mr. Peter Tabuns:** That's interesting. Have you had your lawyers look at that?

**Mr. Rob Burton:** Well, no. One of the essential rules of business is to only deal with what is yours; right? So we don't do your job. The job you give us to do is hard enough. I often say: Thank God I'm only the mayor of Oakville. I can't solve other people's problems.

**Mr. Peter Tabuns:** Your city called for an interim control bylaw because of your concern that a privately run plant would not have the same public health credibility as a publicly owned one. I came across that when I was reading the OMB decision the other day. Can you enlarge on that argument?

**Mr. Rob Burton:** It was our impression that the private proponent was, in our few meetings with them, callously indifferent to the health and safety concerns, and we assumed that the profit motive lay behind that indifference to our concerns.

I'm a big believer in public power. I don't like to criticize the Legislature, but when all parties came together to do what they did to Sir Adam Beck's vision, I think we made a mistake as a society. I thought we were much better served with public power.

0930

**Mr. Peter Tabuns:** You are aware that the NDP supports public power?

**Mr. Rob Burton:** I am, and glad to hear it, but I do know that the decision that was taken was taken with all-party consent.

**Mr. Peter Tabuns:** Sorry. The decision to proceed with this plant?

**Mr. Rob Burton:** No, the decision to abandon Sir Adam Beck's vision, back in the late 1990s.

**Mr. Peter Tabuns:** Not to my knowledge, but we'll have another day to discuss that, I'm sure.

**Mr. Rob Burton:** Sure.

**Mr. Peter Tabuns:** You've told us that you were informed the plant was being cancelled when you arrived at the press conference.



**Mr. Rob Burton:** Not even when I arrived. When it was announced by the minister—I didn't know what to expect when we went. There was quite a large—I mean, C4CA came out; I think all or most of council came. It was a pretty large—the media all came. I didn't know what they were going to say. I was hoping for something—anything; a delay, a study. When they announced the cancellation—I was pretty elated when I won the licence for YTV, but this was a higher level of elation. This was amazing.

**Mr. Peter Tabuns:** Subsequently, were you briefed by the minister, the OPA or the Premier's office about their reasons for cancellation? Were you individually briefed at any time about this cancellation?

**Mr. Rob Burton:** They gave their reasons at the press conference, and I was never personally briefed. I'm fine with that. I mean, I'm only the mayor. I have to know my limitations.

**Mr. Peter Tabuns:** Were you ever sent a written communication setting out the decision and the reasons for the decision?

**Mr. Rob Burton:** You know, I don't believe I was, but I don't actually recall. I mean, anything that came subsequently would be anticlimactic.

**Mr. Peter Tabuns:** Okay. Now, your city took a number of steps to try and block this plant from going forward. You had the interim control bylaw, the amendment to the official plan. You brought forward the PM<sub>2.5</sub> bylaw. Were each of these contested legally?

**Mr. Rob Burton:** The interim control bylaw certainly was appealed to the Ontario Municipal Board. As I've said, we were upheld by the Ontario Municipal Board, saying that we did exactly the right thing at exactly the right time for exactly the right reasons.

That decision of the board was subsequently appealed, if I recall correctly, to the Court of Appeal, and subsequent events—the cancellation of the plant—overtook that, and that was abandoned.

**Mr. Peter Tabuns:** When that went to Court of Appeal—

**Mr. Rob Burton:** Oh, excuse me; I didn't answer the other question. I don't recall that being appealed—the OP changes and the zoning changes—and the health protection air quality bylaw was not appealed.

**Mr. Peter Tabuns:** Okay. So the only tribunal and court hearings related to your interim control bylaw?

**Mr. Rob Burton:** That's right.

**Mr. Peter Tabuns:** Which was upheld by the OMB, so it was in effect?

**Mr. Rob Burton:** Yes. An interim control bylaw is easily misunderstood, at least among residents. The Legislature created it, so you probably understand it perfectly. All it is is a delaying tactic to give you time to create rules which can be contested at the board if people don't like them. So it's a very well-set-up procedure of checks and counterchecks.

**Mr. Peter Tabuns:** Did you do, at any point, an energy study when you were defending your interim

control bylaw? Did you provide evidence of the need for or lack of need for this plant?

**Mr. Rob Burton:** No. I am aware, though, that C4CA did work on that front. I did see it at a public meeting where they exposed it to the public, and it did seem to be quite extensive. I don't know if you're calling them, but if you do, perhaps they could share that with you.

**Mr. Peter Tabuns:** Okay. Given the interim control bylaw that you passed, there was never a building permit issued to TransCanada, then?

**Mr. Rob Burton:** That's right.

**Mr. Peter Tabuns:** Is there a real possibility that no building permit ever would have been issued?

**Mr. Rob Burton:** They would have had to have changed their attitude towards the kind of plant they were trying to build, I think, to get a building permit. As proposed, I don't believe their plant would have gotten a building permit, I guess is what I'm trying to say.

**Mr. Peter Tabuns:** How much time do I have, Mr. Chair?

**The Chair (Mr. Shafiq Qaadri):** Five minutes.

**Mr. Peter Tabuns:** In the course of this process, was there a time when it was clear to you that the plant and the government's approach were clearly in trouble?

**Mr. Rob Burton:** No. My experience on the earlier power plant, under the previous government, where all objections were ridden over and all approvals were granted, had led me to be quite pessimistic about the possibility of it being stopped. Frankly, I never expected it to be stopped. I was flabbergasted. I don't remember ever being happier in my life.

**Mr. Peter Tabuns:** Did you see mounting opposition in your community to this proposal as time went by?

**Mr. Rob Burton:** The community was implacably opposed to this power plant.

**Mr. Peter Tabuns:** And did their mobilization gain momentum as time went by?

**Mr. Rob Burton:** Oh, yes. The number of people who would come out for the public meeting was astonishing. We have a fairly large council chamber. We had to set up huge overflow rooms in order for the public to participate. We have a large atrium that will accommodate maybe 400 people, and we used that as one of our spill-over rooms and managed to fill it, too, in addition to our council chamber. No, there was huge, huge interest and huge turnout—huge concern.

I remember—I'll never forget—running into a woman and her daughter when I was going to the grocery store. They saw me, and they were crying with fear and anxiety about this, because they lived so close to it. And I thought, "This has really gone too far when, as mayor, you encounter that in your streets."

**Mr. Peter Tabuns:** Mr. Mayor, do you think the right time to have stopped this plant was before the contract was signed with TransCanada or after?

**Mr. Rob Burton:** I believe that it should never have been located there. If you can find out how it got chosen to go there, you'll be doing everybody a service.



**Mr. Peter Tabuns:** Do you think it would have been better to cancel before they signed a contract?

**Mr. Rob Burton:** I'm assuming that the only reason they're eligible for any compensation is because somebody signed a contract with them. I don't understand why anybody would do that in the circumstances I've outlined, such as not getting their municipal approvals and so on.

I was frustrated during the process by the lack of access we had to—we couldn't read the contract, for example. I would hope that by now every member of the Legislature has had a chance to look at that. I don't think the process that was used was a proper and correct process in the public interest.

In a way, the OPA remark at the public meeting that, "We're not in the business of protecting the environment; we're in the business of building power plants," speaks to the attitude that, I think, runs through this mistake. I have a belief that what was going on was, people were given a narrow task and they had their deflector screens on full, and they were disregarding any disconfirming information and plunging ahead recklessly.

**Mr. Peter Tabuns:** And you're well aware that the OPA was not following the directives of an all-party committee but following the directives of the Liberal government?

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**Mr. Rob Burton:** Well, I understood the OPA to be an arm's-length agency of the Legislature. Certainly it was a majority government, and if there were direction going to the OPA, it's logical to me that it would be coming from the government. I absolutely agree with that.

**Mr. Peter Tabuns:** Fine.

**Mr. Rob Burton:** That can't surprise anyone. But I have remained confused as to just how long the arm is of this arm's-length relationship.

**Mr. Peter Tabuns:** Well, having read the emails, that arm is no longer there. It's held close to the chest—for your information.

The decision-makers you talked with: Did you talk to—

**The Chair (Mr. Shafiq Qaadri):** I need to intervene there, Mr. Tabuns.

To the government side: 10 minutes to Mr. Delaney.

**Mr. Bob Delaney:** Thank you, Chair. Mayor Burton, you said in your remarks that Mr. Tabuns, to use your words, had an extra reason to identify with your struggles. You've mentioned how the town felt supported by all parties. Would you like to elaborate, particularly on the support Mr. Tabuns lent you in the drive to get the Oakville power plant cancelled?

**Mr. Rob Burton:** We enjoyed expressions of support from all parties, including Mr. Tabuns, and we appreciated the support of all parties. We were particularly encouraged by the strong statements that MPP Ted Chudleigh, who represents the northern third or so of Oakville, also made.

We worked as hard as we did because we were able to keep a sense of hope that the statements of support that we were receiving from our MPPs and from MPPs from other parties—that something might break our way.

**Mr. Bob Delaney:** Just a clarification question: The entity that made the siting decision for the proposed plant was the Ontario Power Authority, correct?

**Mr. Rob Burton:** That's my understanding.

**Mr. Bob Delaney:** Okay. Ms. Cansfield has some questions.

**Mrs. Donna H. Cansfield:** Thank you very much. I just wanted to follow up on a couple of questions that Mr. Yakabuski had. It's about the whole process around an official plan, and if I'm incorrect, you could maybe elaborate. But I think it's the responsibility of every municipality to, in fact, put a local plan together—representing the constituents in their jurisdiction—and that that official plan, once it goes through public scrutiny and the council, then go to the provincial government, where they have a look at it as well, that it conforms with public policy etc. That's correct, right?

**Mr. Rob Burton:** That is, and it's an underappreciated fact of our official plans that they come here for approval before they're then put out for people to appeal.

**Mrs. Donna H. Cansfield:** So in that plan—and I think it's actually the Municipal Act of 2001, which came out of the other government—is something called the local improvement charges. This is where if you engage a developer to participate in any development that fulfills the obligation under your official plan, they can and you can, under regulation 37, receive additional development charges that can go to anything you determine that is needed in your community. That's not unusual; that's very much a part of the Municipal Act. Is that correct?

**Mr. Rob Burton:** My understanding of section 37 is that it's an authorization that's only available to the municipality to use if we have provided clear rules in our official plan for how we would use it.

**Mrs. Donna H. Cansfield:** Correct, so—

**Mr. Rob Burton:** And—sorry.

**Mrs. Donna H. Cansfield:** I was going to say, so then it's not a quid pro quo; there's an actual process that's put in place once a plan has official sanction, it has gone through the development, it's approved by council. Then you can, if you choose, apply regulation 37.

**Mr. Rob Burton:** Yes. Under section 37, my understanding is that only if you set out rules that are clear enough to be followed can you engage the possible benefits under section 37. You have to sort of spell them out in advance so that people can read it and sort of calculate in advance what the quid pro quo is going to be.

The way we've done it is we've identified certain parts of town where we think the ideal density—and we only apply it to residential; I'm not aware of a way to apply it to other things. We set out areas of town where we prescribe what our community believes to be the correct level of density, and we set out in certain areas where there may be a possibility of being able to take

additional density—we identify those areas, and we identify basically the offsetting measures the developer will provide in order to allow that extra density to fit in the area. So it's very much a case of trying to make sure that the public infrastructure of the area is adequate to support the number of people that the developer wishes to put there.

**Mrs. Donna H. Cansfield:** So would it be safe to say you've put together a very above-board, transparent process dealing with these local improvement charges in regulation 37, and that in fact any developer who does business in the town of Oakville is quite aware of section 37 and knows exactly what the process is?

**Mr. Rob Burton:** What I would say is that we work very hard in Oakville to set up planning rules that are very clear so that people can successfully run their businesses with clarity and certainty of the process. In fact, over the last six and a half years that I've been mayor, it's been one of my main themes: to get what I call the rule of law in place so that there's no guess and there are no surprises and it's all clear and in front of you—all open, clear, fair and transparent.

**Mrs. Donna H. Cansfield:** Thank you. I think that the Premier has been very clear herself that that process is to be very local and locally driven. So I thank you, again, for your full response.

**The Chair (Mr. Shafiq Qaadri):** It's four minutes to the government side if you wish. Mr. Del Duca?

**Mr. Steven Del Duca:** I'm just wondering, Mayor, at any point in the course of the 18 months when you were sort of building the case locally for why the power plant shouldn't be built in Oakville, did you have any conversations or communication or correspondence with PC Party leader Tim Hudak?

**Mr. Rob Burton:** I met with Mr. Hudak. Mr. Hudak was kind enough to meet me, I think at least twice, but at least once—I actually believe it was twice. I have no complaints about those meetings. I took him to be expressing support for the path that the community was on.

**Mr. Steven Del Duca:** I guess I would wrap up by just saying that, as MPP Cansfield mentioned a second ago about Premier Wynne, in the government's recent throne speech, there was a statement that suggested or stated that we are committed as a government to more local decision-making in the siting of future energy infrastructure. I'm just wondering if that was a statement that you'd be happy to hear about.

**Mr. Rob Burton:** I was very happy to hear that. As I said earlier, I think that's a faster and easier way to move away from what I think was a very flawed process in choosing the location for the proposed power plant in Oakville. So, yes, I was happy with that.

**Mr. Steven Del Duca:** Great. Thank you very much.

**Mr. Bob Delaney:** Thank you, Chair.

**The Chair (Mr. Shafiq Qaadri):** Thank you to the government side. To the Conservatives, Mr. Fedeli. Ten minutes.

**Mr. Victor Fedeli:** Thank you very much, Chair. Thank you again, Your Worship, for being here.

I wanted to just pick up a little bit on where my colleague Mr. Leone was. You've heard, perhaps, in the news, some of these code names. Had you heard of any of these code names before? Had you ever heard of the code name "Project Vapour" before?

**Mr. Rob Burton:** No.

**Mr. Victor Fedeli:** Had you ever heard of "Project Apple"?

**Mr. Rob Burton:** No.

**Mr. Victor Fedeli:** "Banana"?

**Mr. Rob Burton:** No.

**Mr. Victor Fedeli:** "Fruit Salad"?

**Mr. Rob Burton:** No.

**Mr. Victor Fedeli:** So you can't shed any light on the secret code names that the Liberal government put on the cancellation of Oakville and Mississauga?

**Mr. Rob Burton:** No, I'm not privy to any of that.

**Mr. Victor Fedeli:** When you first heard the figure of \$40 million to cancel the Oakville plant—when did you first hear of that number?

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**Mr. Rob Burton:** My recollection is, I think I was in the Legislature one day when what I believe turned out to be the first batch of documents—somewhere around then is when I—

**Mr. Victor Fedeli:** Well, that's exactly where I'm going, actually. So, you do know there was a first batch of documents. You have since heard, of course, that there was a second batch of documents, and continued tranches of documents have been coming out. Were you aware at any point in time of any documents that we did not receive in the first batch? Do you have any light you can shed on the hidden files?

**Mr. Rob Burton:** No, sir. Well, actually, there is one thing—a little bit of light I could shed. Mr. Leone and you have put me in mind of a case where the council needed a document, and we didn't get it at first. I guess I'll tell the story by way of illustrating how we deal with that.

**Mr. Victor Fedeli:** I'm more interested, though, in the gas plant cancellation documents. Are you aware of any of the secret or hidden gas plant documents pertaining to Oakville or Mississauga?

**Mr. Rob Burton:** No.

**Mr. Victor Fedeli:** You have no understanding of those at all? So, you're not familiar, then, with who would have ordered the cover-up of those documents? You have no information to do with that at all?

**Mr. Rob Burton:** Well, the reason that I'm reluctant to believe that there was any intent to cover up is illustrated by the incident that happened in our town where we—

**Mr. Victor Fedeli:** Your Worship, I appreciate that, but I'm specifically talking about gas plant documents. Let me just ask you, then—I was finishing off earlier with my conversation about the political staff. Did you or anyone in your office ever speak with any political staff from the Minister of Energy's office, before or after the gas plant cancellation?



**Mr. Rob Burton:** I've already said yes. We spoke to everybody we could, and I'm sure we spoke to the people in that category.

**Mr. Victor Fedeli:** Was that when you were still in support of a gas plant in your municipality of Oakville, or is that when you were lobbying against it? Which would that have been, when you spoke specifically with—did you speak with the minister specifically about that, the Minister of Energy?

**Mr. Rob Burton:** You know what? I don't recall being in support of the power plant.

**Mr. Victor Fedeli:** You told Mr. Yakabuski that there was a period in time under circumstances when you supported the power plant. That's what you had said earlier.

**Mr. Rob Burton:** I took pains to say that I tried to keep an open mind and to not predetermine a decision on it, and I have trouble understanding that being taken as support.

**Mr. Victor Fedeli:** Back when he was talking—

**Mr. Rob Burton:** In my mind, there are three stops on the line. There's support; there's "wait and see"—neutral—"I haven't made up my mind"; and there's opposed. I was trying to be here believing that I was probably going to oppose it, because they were producing a plant that was worse than the last 112 under President George Bush, for Pete's sake—

**Mr. Victor Fedeli:** So, at the time—

**Mr. Rob Burton:** —but I was still, at that point, holding out the hope that some sense of pride would have them build a better plant. Alas, there was never any effort to do that.

**Mr. Victor Fedeli:** So when Mr. Yakabuski was talking about the plans to relocate the container terminal in exchange for allowing the power plant to be located in Oakville—you have no recollection of that?

**Mr. Rob Burton:** No. We've never heard of this. Can we ask where that comes from?

**Mr. Victor Fedeli:** Did you send any letters to the minister?

**Mr. Rob Burton:** I beg your pardon?

**Mr. Victor Fedeli:** Did you send any correspondence to the minister about cancelling the Oakville power plant?

**Mr. Rob Burton:** You know, I don't remember, but I hope so.

**Mr. Victor Fedeli:** If you will undertake, then, to table those letters with the committee, we'd appreciate that.

**Mr. Rob Burton:** Sure.

**Mr. Victor Fedeli:** Maybe within two weeks might be an adequate time frame.

Does the name Craig MacLellan ring a bell with you, Your Worship?

**Mr. Rob Burton:** Vaguely; I vaguely recall the name.

**Mr. Victor Fedeli:** Did you have any conversation or correspondence with him?

**Mr. Rob Burton:** Can you just—who is he?

**Mr. Victor Fedeli:** Former Minister Duguid's former chief of staff.

**Mr. Rob Burton:** I might have; I'm sure I must have spoken to him, if only to be invited to the event.

**Mr. Victor Fedeli:** So, would you undertake to turn over any correspondence with him if, indeed, there is any that exists?

**Mr. Rob Burton:** Sure.

**Mr. Victor Fedeli:** Thank you. Did you speak with any other political advisers to the Minister of Energy?

**Mr. Rob Burton:** None that I recall.

**Mr. Victor Fedeli:** Okay. Did you or anyone in your office ever speak with any political staff from the office of the Minister of Municipal Affairs and Housing about the Oakville gas plant, either before or after the cancellation?

**Mr. Rob Burton:** I don't know. I mean, I hope so. I don't recall.

**Mr. Victor Fedeli:** Do you recall speaking with the minister about it personally?

**Mr. Rob Burton:** You'd have to remind me who the minister was at that time.

**Mr. Victor Fedeli:** Did you, or anyone in your office, ever speak with any political staff from the Premier's office about the Oakville gas plant, before or after its cancellation? I'm picking up on where Mr. Tabuns was leaving off.

**Mr. Rob Burton:** I don't know if the gentleman I met with was "political staff"; I was just told that he was staff. But I did speak with a gentleman, subsequent to my meeting with the Premier, in which a discussion was held about—as a precursor discussion to the creation of the Balsillie task force.

**Mr. Victor Fedeli:** You have already said to Mr. Tabuns that you did speak with the Premier personally. Can you just remind me when that was?

**Mr. Rob Burton:** At AMO in 2010.

**Mr. Victor Fedeli:** August 2010, then?

**Mr. Rob Burton:** Yes, sir.

**Mr. Victor Fedeli:** Did you send any correspondence, any letters to the Premier regarding the cancellation of the Oakville gas plant before or after AMO, inviting him to AMO, asking for a submission at AMO, meeting him at AMO?

**Mr. Rob Burton:** I'm not sure. It's our custom, when we pass resolutions at council, to forward them to all and sundry, including the Premier, if appropriate. So, you know, in the absence of a more specific question, "probably" is the only thing I can tell you.

**Mr. Victor Fedeli:** Would you undertake, then, to turn over to the committee any and all correspondence with the Premier, even including council motions regarding the cancellation of the Oakville gas plant?

**Mr. Rob Burton:** Sure.

**Mr. Victor Fedeli:** Within two weeks? Is that fair?

**Mr. Rob Burton:** Sure.

**Mr. Victor Fedeli:** Does the name Jamison Steeve mean anything to you, or the name Chris Morley ring a bell with you?

**Mr. Rob Burton:** I've heard the first name, and I think I've heard the second name, but I don't remember ever meeting either gentleman.

**Mr. Victor Fedeli:** Do you have any correspondence with either of the gentlemen?

**Mr. Rob Burton:** I don't think so.

**Mr. Victor Fedeli:** Do you have any correspondence with anybody—any of the political advisers or the government—related to the cancellation of the Oakville gas plant that I haven't asked you for specifically today?

**Mr. Rob Burton:** I don't think so.

**Mr. Victor Fedeli:** There's no other correspondence other than perhaps the letters to the Premier, perhaps correspondence with the energy minister?

**Mr. Rob Burton:** I don't believe so.

**The Chair (Mr. Shafiq Qaadri):** Thirty seconds, Mr. Fedeli.

**Mr. Victor Fedeli:** Will you offer to turn over all your emails, letters, correspondence, communications you've had with the provincial government, or the OPA, or the ADM level or higher, including the political staff? Would you undertake to do that within two weeks, any and all correspondence related to the Oakville gas plant to any and all people that I have mentioned?

**Mr. Rob Burton:** Sure.

**Mr. Victor Fedeli:** Thank you, Chair.

**The Chair (Mr. Shafiq Qaadri):** I need to intervene there, Mr. Fedeli. To the NDP side, to Mr. Tabuns. Ten minutes.

**Mr. Peter Tabuns:** Thank you, Mr. Chair. Thank you for your patience today. Just to be clear—and I apologize if I'm repeating any questions—we'd understood from remarks you'd made earlier that you had met with political staff, either from the Premier's office, the minister's office, prior to the decision being made and between the time the contract was awarded and the time it was cancelled. Did, in fact, any of those meetings occur?

**Mr. Rob Burton:** I'm sorry. What's the question?

**Mr. Peter Tabuns:** Sorry. Did you, in fact, have meetings with political staff prior to this decision being made, and then prior to it being cancelled?

**Mr. Rob Burton:** I don't remember any meetings before the contract was issued or the announcement was made, but it's not impossible. We were really focused on our work at that time. Once the decision was made to put it in Oakville, we did seek to communicate our evidence to the government many times, and we had—I can remember the two meetings, one with the Premier and one with his aide, but I don't remember any others.

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**Mr. Peter Tabuns:** Okay. I'm going to go back to the building permit. You had been successful at the OMB with your interim control bylaw. You were challenged at a higher court. I'm assuming Oakville was prepared to go as far as it legally could to block a building permit from being issued. Is that correct?

**Mr. Rob Burton:** Oakville was prepared to go to the Supreme Court of Canada if they would hear the case. We've been there before, on another matter.

**Mr. Peter Tabuns:** Did you ever do a calculation as to how long such a legal process might take?

**Mr. Rob Burton:** We had a pretty good idea that it would be several years.

**Mr. Peter Tabuns:** Were you aware that there were force majeure clauses in the contract with TransCanada Enterprises that would have jeopardized this project if you would have been able to delay it long enough?

**Mr. Rob Burton:** I remember being very frustrated at not being able to see all of the contracts. No, I wasn't aware of what you're talking about.

**Mr. Peter Tabuns:** Okay. Your PM<sub>2.5</sub> bylaw to reduce air pollution: In your opinion, TransCanada Enterprises could not have met that standard with the investment they were making. Is that correct?

**Mr. Rob Burton:** The project as proposed, I was advised by my technical staff, would not meet that bylaw.

**Mr. Peter Tabuns:** You may or may not be aware that, in correspondence that was released to us, TransCanada Enterprises was aware they couldn't meet that standard and were fearful that they would lose the project. In fact, the Liberal government looked at ways of getting around your bylaw.

**Mr. Rob Burton:** I wasn't aware of that.

**Mr. Peter Tabuns:** Okay. So there were two pathways that could have blocked this project from going forward: your bylaw on PM 2.5, and your interim control bylaw that could have gone to the Supreme Court of Canada. In both those cases, TransCanada would have lost the contract, and the government of Ontario would not have had to pay, under force majeure. Do you think that might have been a preferable outcome?

**Mr. Rob Burton:** I would greatly prefer that, as a taxpayer.

**Mr. Peter Tabuns:** So would I, Mr. Burton; so would I.

Just going back, can you tell us who on the Premier's staff you met with?

**Mr. Rob Burton:** Mr. Freeman, I believe.

**Mr. Peter Tabuns:** I'm sorry?

**Mr. Rob Burton:** Mr. Freeman.

**Mr. Peter Tabuns:** Mr. Aaron Freeman?

**Mr. Rob Burton:** Yes.

**Mr. Peter Tabuns:** Okay. Thank you for that.

In 2006, a bill was under consideration to amend the Municipal Act. At that time, MPP Kevin Flynn, talking about the ability to overrule municipal decision-making on the location of the power plant, said, "What we're saying is that in cases where the supply of energy is in jeopardy to the province of Ontario, to hospitals or to industry or to just plain old homes that want to have their lights on, there is an exemption power that exists to move that project forward. That's it in a nutshell."

At that time, Michael Prue, our member on the general government committee, opposed that. He let your citizens know this in a debate that took place when Mr. Flynn's private member's bill came forward on stopping the Oakville plant.



Mr. Prue was quoted as saying, with reference to that change: "That day was August 30, 2006, on a motion from the member from Oakville. That was motion number 94, dealing with section 23 of the Municipal Act, which took away every single right that every single citizen and every single municipality in this province had to question whether or not a plant like this was sited in their municipality. Do you all know that?"

Were you aware that it was Mr. Flynn who changed an act in order to give the provincial government power to override your planning?

**Mr. Rob Burton:** Actually, I was not aware of that event. At the time, I wasn't mayor. That was before I was called to service as mayor. But because of my previous experience unsuccessfully fighting the Sithe power plant on Winston Churchill in 2000-01, I would have been opposed to that change.

**Mr. Peter Tabuns:** Okay. How much time do I have left, Mr. Chair?

**The Chair (Mr. Shafiq Qaadri):** About three and a half minutes.

**Mr. Peter Tabuns:** Three and a half minutes.

As we see it, the government pursued a course of turning the development of power generation over to the private sector, which left them at risk, in a cancellation situation, of having to pay the profits for 20 years. That comes up time and time again in the documents. If they had followed a public power course, one which you endorse, the risk to the public, if a mistake is made, in cancellation is far less than if we have a private plant where we have to pay profit for 20 years.

This government, notwithstanding your warnings on health, on safety, and I assume on the political storm that would be created, went ahead and made a profound error. Then they compounded this error with a cancellation decision when, in fact, you were holding this plant off quite well, from what we can see in the records. I just want to be clear again, and I had asked you earlier on: Did this problem that we are dealing with today flow from the initial decision to proceed with this private power plant in your city?

**Mr. Rob Burton:** I think it flowed from a tragically flawed process for determining how to build and where to build power plants. It's my hope that at some point, the Legislature will turn its mind to a fair, transparent and accountable process that respects local preference.

**Mr. Peter Tabuns:** Which government put this decision-making process in place?

**Mr. Rob Burton:** Which process?

**Mr. Peter Tabuns:** The one that you just said was flawed and caused the problems.

**Mr. Rob Burton:** I don't actually know. The process that we engaged in in 2000-01 was just as bad and, at times, difficult to tell from the one we were working under this time. So I'm not really sure where the process came from; all I know is, everyone in the province would be better off if we had a better process.

**Mr. Peter Tabuns:** I assume the process that you dealt with was run by the Ontario Power Authority. Is that correct?

**Mr. Rob Burton:** That's the one I'm complaining about.

**Mr. Peter Tabuns:** And you're well aware that the Ontario Power Authority was set up by the Liberal government and directed by them.

**Mr. Rob Burton:** Yes, now that you remind me; yes.

**Mr. Peter Tabuns:** I don't think I have any further questions.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns. And thanks to you, Mayor Burton, for your testimony and your presence, and thank your entourage as well.

We now have a subcommittee meeting. Our committee is recessed till—

**Mr. Rob Leone:** Chair.

**The Chair (Mr. Shafiq Qaadri):** Yes, Mr. Leone.

**Mr. Rob Leone:** I would move that we spend an extra five minutes with this witness.

**The Chair (Mr. Shafiq Qaadri):** Is there all-party agreement on this? Those in favour of five more minutes? Those opposed?

**Mr. Bob Delaney:** I'm sorry; I didn't understand what question is asked here.

**The Chair (Mr. Shafiq Qaadri):** Mr. Leone is asking for five more minutes. I might just advise you as well, Mr. Leone: You have the opportunity of recalling this witness later.

**Mr. Bob Delaney:** Yes. No, he'll need unanimous consent on that.

**The Chair (Mr. Shafiq Qaadri):** He has moved a motion. He'll need a majority on that.

Those who would wish Mr. Burton to—

**Mr. Steven Del Duca:** That would be a minute and a half each?

**The Chair (Mr. Shafiq Qaadri):** That is an extremely good question. I presume you mean a minute and a half each, Mr. Leone.

**Mr. Rob Leone:** A minute and a—

**The Chair (Mr. Shafiq Qaadri):** Mr. Leone, I don't think that was the intent of what you're after. I would suggest once again that you withdraw your motion and perhaps reconfigure it more appropriately. How's that?

**Mr. Rob Leone:** I was just hoping we could ask a very quick question rather than spending another hour and a half—

**The Chair (Mr. Shafiq Qaadri):** Mr. Leone, I'm going to have to intervene there.

This committee is recessed till 3 p.m. today.

*The committee recessed from 1009 to 1502.*

**The Chair (Mr. Shafiq Qaadri):** Ladies and gentlemen, colleagues, I call to order once again in session the justice policy committee. As you know, we're here to hear two witnesses this afternoon.

MR. PETER WALLACE

**The Chair (Mr. Shafiq Qaadri):** I'd invite Mr. Peter Wallace to please come forward. Welcome, Mr. Wallace, in your capacity as secretary of cabinet and clerk of the



executive council of Ontario. I'd invite you to please be affirmed before we begin the testimony.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Do you solemnly affirm that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth?

**Mr. Peter Wallace:** I affirm.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Wallace. As you know the protocol very well, no doubt having designed it, I would now invite the PC Party to please begin with—

**Mr. Peter Tabuns:** Does he not get an opening statement?

**The Chair (Mr. Shafiq Qaadri):** I'm sorry; quite right. Five minutes, please; opening statement.

**Mr. Peter Wallace:** I've designed many things, but not that.

Thank you. I am Peter Wallace, secretary of the cabinet and head of the Ontario public service. I've been a public servant since 1981 and have served in my current role since late 2011. Prior to this, I was Deputy Minister of Finance and secretary to the treasury board.

I appreciate the opportunity to appear today and speak to the role of the Ontario public service with respect to the matters before this committee. I have a broad understanding of the relevant events and processes. However, much of the actual work on these files has been carried out by others in the public service, and my knowledge is therefore indirect.

As is broadly accepted, public servants are responsible for implementing the policy direction of the government of the day. The political direction and desired outcomes with respect to the gas plants were both clear and accorded a high priority. These objectives included: suspension of activities at the initial sites; relocation; and the maintenance of commercial relationships with the proponents, including securing essentially equal investment and financial opportunities for those proponents in the electricity generation industry in Ontario.

The work by the public service and independent agencies took place in a complex and difficult environment. Among the contributing factors were: very complex commercial contracts with the proponents, as well as secondary linkages with their financial and other partners; actual and threatened litigation; the governance associated with the independent roles of the Ontario Power Authority and other agencies; and a timeline that exceeded two full years. The ministries involved in the implementation of the government's policy direction included energy, finance, Cabinet Office, attorney general, environment, municipal affairs and housing. The agencies involved included, as you know, the Ontario Power Authority, the Ontario Financing Authority, the Ontario Electricity Financial Corp., Ontario Power Generation, Independent Electricity System Operator and, of course, Hydro One. Throughout this time, various deputy ministers and officials worked in teams. We also included Infrastructure Ontario and external advisers to serve as

intermediaries between the public service, the Ontario Power Authority and proponents of the gas plant locations and sites.

The implementation process associated with the government's objectives necessarily involved extensive interactions between public servants, government ministers and the ministers' political staff. That direction centred on:

- seeking direction from the government ministers and advisers on the specifics of the proposed commercial transactions and the eventual settlements;

- securing and documenting cabinet policy and financial authorities—and this was often done under very tight time frames;

- securing policy directions from the government with respect to both the Ontario Power Authority and the Ontario Electricity Financial Corp.; and, of course,

- maintaining viable relationships between the government, the agencies, the proponents and others despite periods of strongly held differing views and perspectives.

I note as well that my predecessor took measures to impose a screen on further involvement by selected political staff in the Oakville matter after becoming aware of an early outreach by those staff to the proponent.

The public service acted appropriately in the implementation of policy direction.

I will now turn to the role of the public service in the production of documents.

The Ontario public service is experienced with the rules and practices associated with document disclosure. We have extensive experience associated with the discovery related to commercial and labour relations, litigation, freedom of information, judicial inquiries, and the role of the Provincial Auditor in the document production associated with his inquiries. However, the committee process associated with the production of records is a new factor in our environment. It is one that required some thought and additional research to understand. It also required some thought and additional research to understand how this new approach related to the existing procedural safeguards in place that covered critical constructs such as cabinet privilege, legal privilege, statutory privilege, and, of course, the contractual privileges associated with the production of documents related to third parties. This is a new approach to us and it did require some time to understand.

It is my belief that the Ministry of Energy acted in good faith in searching for and producing documents in their possession that they understood were responsive to the committee's request. The timing of these disclosures was of course affected by the views of the minister, as has been indicated by the minister of the day's letters to the committee and to the Legislature. The deputy wrote to the Clerk, explaining and taking responsibility for any deficiencies in the initial production of records—

**The Chair (Mr. Shafiq Qaadri):** Mr. Wallace, reluctant as I am to interrupt the secretary of cabinet, I will now need to turn the floor over to the Conservative side to—



**Mr. Peter Wallace:** Would it be possible for me to talk for another, say, two minutes?

**The Chair (Mr. Shafiq Qaadri):** Is there all-party agreement?

**Interjection:** Yes.

**The Chair (Mr. Shafiq Qaadri):** Please proceed.

**Mr. Victor Fedeli:** May I ask, Chair: Can we have a copy of your speech as well?

**Mr. Peter Wallace:** You can.

**The Chair (Mr. Shafiq Qaadri):** Of course.

Two minutes.

**Mr. Peter Wallace:** I'm aware of several outstanding questions related to document disclosure, and this is why I asked for the indulgence of the committee to cover these what I believe to be important issues.

First, the use of code names for commercial transactions is routine in the Ontario public service. It covers essentially all major commercial transactions with which we have been engaged and which the province has undertaken. This practice was not specific to the gas plants transactions and has not been used, to my experience, by the public service with any intent whatsoever to obstruct legitimate requests for the production of documents.

I can confirm to this committee that it is my belief that there are other documents in possession of the Ontario public service which fall outside of the request by the committee to the Ontario Power Authority and the Ministry of Energy. Those documents will include those created and retained by the agencies and, of course, the ministries and offices I noted earlier.

I would also like to take a moment to address suggestions that a Ministry of Energy employee directed the Ontario Power Authority to withhold documents from disclosure. As head of the Ontario public service, I would be very concerned regarding any allegation of inappropriate behaviour by a public servant. I consider this to be a very serious matter and asked, in consequence, that the Ministry of the Attorney General undertake an investigation with a view to discovering the actual facts of the circumstances.

Ministry of the Attorney General counsel undertook such an investigation and reported back to me that the employee in question had a sincere belief that instructions were not made. However, the Ministry of the Attorney General counsel were not able to find any conclusive evidence to either support or refute the allegation. This was because the Ministry of Energy employee unfortunately attended a meeting in the absence of more senior staff or in the absence of counsel who had originally been intended to attend the meeting. She attended alone due to the unavailability of those.

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In that context, I am left with a lack of definitive information as to the actual consequence of—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Wallace. I appreciate the co-operation of members of the committee and now officially turn it to the Conservative side. As you know, you have 20 minutes.

**Mr. Victor Fedeli:** Thank you very much, Chair. Mr. Wallace, thank you for being here today. I want to start by saying thank you for three decades of public service.

I want you to look in the package that you were given. There's an item called exhibit A.

**Mr. Peter Wallace:** Has that been provided to me?

**Mr. Victor Fedeli:** Excuse me, to the Clerk: Does Mr. Wallace have the exhibits?

**Mr. Peter Wallace:** I'm happy to look at the item, but I do need to have it.

**Mr. Victor Fedeli:** Okay. So in exhibit A—it is a document where there is an email that you're copied on back on July 27, 2011. It's from David Livingston, formerly of Infrastructure Ontario, who later went on to become Dalton McGuinty's chief of staff. The subject line is, "Confidential advice to cabinet." It proposes, basically, a walk-around package on Project Vapour. Can you tell us, first of all, what "Project Vapour" was referring to?

**Mr. Peter Wallace:** Project Vapour was referring, in my understanding, to the cancellation and relocation of the Oakville plant.

**Mr. Victor Fedeli:** Oakville? Okay, thank you.

Who came up with the name "Project Vapour"?

**Mr. Peter Wallace:** I don't know.

**Mr. Victor Fedeli:** Okay. When was the term "Project Vapour" first used? When was the first time you would have heard of Project Vapour?

**Mr. Peter Wallace:** Very early on in the process of relocation. Typically, a project would acquire an understanding of the basic policy—

**Mr. Victor Fedeli:** So 2008 or—what year?

**Mr. Peter Wallace:** No, no. Shortly after the time in which the government announced its intention to relocate the plant or to cancel the contract—

**Mr. Victor Fedeli:** Got a rough date? Just a rough date?

**Mr. Peter Wallace:** I believe the date is 2010.

**Mr. Victor Fedeli:** So 2010. You don't know who came up with that, but you know that it would have first been—you first heard it around 2010?

**Mr. Peter Wallace:** I actually can't confirm when I first heard it.

**Mr. Victor Fedeli:** So who in your recollection would be privy to the Project Vapour documents that are in exhibit A?

**Mr. Peter Wallace:** This is material that was intended for—

**Mr. Victor Fedeli:** I'm sorry; you were at finance at the time.

**Mr. Peter Wallace:** I was at finance, but I'll answer to the best of my ability, looking at the material now for the first time.

Obviously, those included in the—

**Mr. Victor Fedeli:** Well, it's not the first time. You obviously saw it when the email came out.

**Mr. Peter Wallace:** Exactly.

Looking at this, obviously the individuals directly included in the material. This would have then been



shared with executive council office in cabinet office—so, essentially, the machinery of government function of cabinet office. It subsequently would have been made available to the ministers, so to cabinet, within the context of the policy decision.

I would understand this to have also been available to a relatively small number of officials, but officials involved in energy, finance and the Ministry of the Attorney General.

**Mr. Victor Fedeli:** So if this was issued on July 27, 2011, approximately when would this have gone to the executive council office or to ministers and the names you gave? Within a day, a week, a month?

**Mr. Peter Wallace:** Oh, very likely within a couple of days.

**Mr. Victor Fedeli:** A couple of days? Okay.

So what is a walk-around package, just in very, very quick terms for lay people like myself? What does “walk-around package” mean?

**Mr. Peter Wallace:** It’s pretty straightforward. We conduct cabinet meetings, and it has long been the tradition of the province of Ontario to conduct cabinet meetings on a weekly basis. From time to time, there are urgent decisions that are required in a time frame that is shorter than a weekly or bi-weekly cycle—and this is during the summer. Typically during the summer, cabinet meetings are held on a bi-weekly or sometimes monthly cycle.

So it would not be untypical at all that an urgent commercial or other matter comes up that—the cabinet secretary, working in conjunction with the Premier’s office, would find an opportunity to create a decision-making forum by cabinet. That could be a special meeting, or it could be an opportunity in which officials go individually to cabinet ministers, have a conversation with them and secure their consent for the cabinet minute under discussion.

**Mr. Victor Fedeli:** So it’s safe to say, in your own words, that this was something of an urgent nature; that’s why a walk-around—

**Mr. Peter Wallace:** Cabinet walk-arounds are typically reserved for items of an urgent nature.

**Mr. Victor Fedeli:** Okay. Which political staffers in the Premier’s office would have been involved with or knew or ought to have known or were aware of Project Vapour, based on the fact that this document was distributed to the names mentioned?

**Mr. Peter Wallace:** I can’t answer the question specifically in terms of the way you phrased the question.

**Mr. Victor Fedeli:** If we gave you a little time, could you give us a list?

**Mr. Peter Wallace:** No. If you gave me a little bit more of a general question, which is those who would have been involved more generally, as opposed to relating to the specific document—I can answer that question.

**Mr. Victor Fedeli:** But there is a specific document, and there’s a cabinet minute, back on the 27th of July. Based on that, would you be able to supply a list of people who were either present or involved with or knew

or ought to have known or were aware of Project Vapour, based on the fact that this—

**Mr. Peter Wallace:** At this particular point in time, the political involvement with Project Vapour from the Office of the Premier was a relatively small circle of individuals, likely including Chris Morley. I am not sure of the others who were involved at this point, in July 2011.

**Mr. Victor Fedeli:** Would you be able to retrace and make that list? Is that possible?

**Mr. Peter Wallace:** We could certainly give it some effort.

**Mr. Victor Fedeli:** Within two weeks, let’s say.

**Mr. Peter Wallace:** Yes.

**Mr. Victor Fedeli:** Okay, thank you. Then I guess I will expand that just slightly: To your knowledge, basically what past or present political staff in the Minister of Energy’s office would have also known or been aware of Project Vapour? I’m going to ask the same question for the Minister of Finance’s office, where you were. Could you—

**Mr. Peter Wallace:** You may want to ask the same general for the Office of the Premier as well.

**Mr. Victor Fedeli:** Then I will. Thank you; I appreciate that.

**Mr. Peter Wallace:** I do not know the Ministry of Energy’s staff at that time.

**Mr. Victor Fedeli:** Okay, that’s fair.

**Mr. Peter Wallace:** In the Ministry of Finance, it would have included the minister’s chief of staff. I do not have a recollection of others being involved.

**Mr. Victor Fedeli:** Supply that list to us to the best of your ability in a couple of weeks. We’re fine with that.

**Mr. Peter Wallace:** Sure.

**Mr. Victor Fedeli:** So prior to this document, July 27—and I know it’s tough to figure this next answer out—was Project Vapour, to your knowledge, raised at any other time at cabinet or a cabinet committee, prior to this document? It’s the first one I found, to be honest. Out of the 56,600 documents, it’s the one that seems to, in my opinion—are there others that would have been before July 27?

**Mr. Peter Wallace:** I don’t have that specific in front of me. But it would be very unsurprising to me if this was raised in a cabinet context prior to that.

**Mr. Victor Fedeli:** So you think this was the first time?

**Mr. Peter Wallace:** No, I do not believe this is—

**Mr. Victor Fedeli:** Oh, you do not think this is the first time?

**Mr. Peter Wallace:** I believe there’s a good chance this would not be the first time.

**Mr. Victor Fedeli:** Well, it’s the earliest document we were given. So are you suggesting there are more Project Vapour documents that we don’t have yet?

**Mr. Peter Wallace:** As I confirmed in my earlier remarks, there are additional documents associated with the cancellation and relocation of the gas plant that were not produced because the government produced—the



Ministry of Energy, for whom I can speak, produced those documents requested by the committee.

**Mr. Victor Fedeli:** So if this was going to go on that walk-around, would there have been a minister basically to sign off on it? Would it have been discussed at cabinet? How can we determine that?

**Mr. Peter Wallace:** There would have likely been a minister-signed submission. But the primary focus point is of any cabinet decision-making, and what fundamentally matters is the minute, which you have there.

**Mr. Victor Fedeli:** I don't have anything signed by a minister. Can you undertake to find that document for us?

**Mr. Peter Wallace:** I can.

**Mr. Victor Fedeli:** Thank you. Would there have been any report-back from the cabinet?

**Mr. Peter Wallace:** I need to make one other request of the committee through you.

**Mr. Victor Fedeli:** Please.

**Mr. Peter Wallace:** I cannot, in and of myself, waive cabinet privilege. These are core constructs that relate to the implementation of any government. The only way in which cabinet privilege can be raised is in response to a specific request that is legally unavoidable for me to comply with. That would, in all likelihood, be an order from this committee.

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**Mr. Victor Fedeli:** Okay. So I'll ask the Chair at the end of this session how we go about getting that so ordered, if that's okay.

At any point in time, did any officials, either within the ministry or the OPA, express any concern to you about political interference or involvement in this file? I heard you speak to it in your original presentation.

**Mr. Peter Wallace:** To be very clear, these files are inherently political. The cancellation and relocation of a gas plant is not an action undertaken autonomously by public service officials. This is an inherently political matter.

**Mr. Victor Fedeli:** Go to exhibit B, then, please, the next one. I think it's titled "Cabinet Minute." Is this indeed the cabinet minute?

**Mr. Peter Wallace:** It gives every appearance of being a cabinet minute, yes. This is July 29, 2011?

**Mr. Victor Fedeli:** A couple of days after that walk-around. So in two sentences, what's a cabinet minute?

**Mr. Peter Wallace:** A cabinet minute is the mechanism by which cabinet establishes the authority to manage or change a previously established policy or previously established financial allocation.

**Mr. Victor Fedeli:** Okay. This cabinet minute comes a couple of days after that cabinet briefing, then, I presume? We're on the same time. Does the fact that it says "Cabinet Minute"—would that imply or mean definitively that it went to the full cabinet?

**Mr. Peter Wallace:** It will have, at some point, been—all cabinet minutes are made available to the full cabinet. It has been a routine practice across all governments, particularly during matters of urgency or during

times of extended periods between cabinet minutes, such as during a summer period, for decisions to be made by a subcommittee of cabinet. For example—

**Mr. Victor Fedeli:** So how can I determine, then, who was at this cabinet meeting?

**Mr. Peter Wallace:** It would be possible to request the appropriate records.

**Mr. Victor Fedeli:** Again, through you, or we'll do that through the Chair?

**Mr. Peter Wallace:** Through the Chair, directing the production of documents.

**Mr. Victor Fedeli:** I kind of thought we did that when we asked, from the Speaker's order, for all the documents, but we'll get to that, sort of maybe at the end.

**Mr. Peter Wallace:** I believe that those were not directed to cabinet office. Those were directed to the Minister of Energy.

**Mr. Victor Fedeli:** Given the impact that this has had in the Ministry of Finance and the Ministry of Energy, can you tell us what you knew at the time, what all this was referring to?

**Mr. Peter Wallace:** The government had announced a policy, of which public servants became formally aware when the government was returned to—sorry, excuse me—had announced a policy to cancel and relocate the TransCanada Oakville plant. This was part and parcel of the process of reaching a settlement with TransCanada.

**Mr. Victor Fedeli:** Okay. Go to exhibit C, then. This is a document entitled "Project Vapour-lock." What's this one about, and how does it differ from Project Vapour? It's a different code name.

**Mr. Peter Wallace:** Project Vapour was the Oakville plant. Project Vapour-lock would be the slightly humorous additional name to refer to the cancellation and relocation of the Mississauga plant.

**Mr. Victor Fedeli:** Vapour-lock was Mississauga?

**Mr. Peter Wallace:** Yes.

**Mr. Victor Fedeli:** Okay.

**Mr. Peter Wallace:** That's my understanding.

**Mr. Victor Fedeli:** Okay. So it differs because it's a different closure of a different plant, in your opinion?

**Mr. Peter Wallace:** Yes.

**Mr. Victor Fedeli:** Okay. Under 3, it talks about the OPA and the government—it says, "OPA and government is also similar to the Vapour transaction." What does that actually mean? I'm not quite sure.

**Mr. Peter Wallace:** In both of these instances, the contract with the proponent was held by the Ontario Power Authority. The government was not a direct party to the transaction. I spoke, in my opening statement, about several of the complicating factors. One of the complicating factors is, the government was announcing a policy change with respect to a contract to which it was not directly a signatory. That contract was held by the power authority.

**Mr. Victor Fedeli:** Okay. So you're saying it wasn't the government; it was the OPA?

**Mr. Peter Wallace:** I am not saying any such thing.

**Mr. Victor Fedeli:** Okay. The last paragraph says—

**Mr. Peter Wallace:** I am saying the policy change was announced by the government, but the means to effect that policy change was through a contract that was the responsibility of the Ontario Power Authority.

**Mr. Victor Fedeli:** So, at the bottom, the last sentence says, “Next steps: Inform OPA that we have a letter from the minister asking them to immediately approach the company ... and inform OPA that we have retained (or asked them to retain) the lead negotiator.” Are you suggesting, then, that it’s the OPA driving this bus or the government driving the bus?

**Mr. Peter Wallace:** This is the government driving the bus.

**Mr. Victor Fedeli:** Okay. So, let’s go down to exhibit D. This is a memorandum to you from David Lindsay—a very heavily redacted document. This is likely one that I would have held up in the Legislature and said, “Blank, blank, blank.”

When you were the deputy at finance, you would have received this letter from then-Deputy Energy Minister David Lindsay. Now, the government has repeatedly said that it has tabled all of the documents, and given the Premier’s assertion and promise to be open and transparent, it would suggest that a document that is half blacked out is not necessarily complying with our Legislature. Would you agree or would you disagree with this?

**Mr. Peter Wallace:** I will speak to the role of the public service in this matter. The Ministry of Energy was provided with a document production order. The document production order required that we produce, at the Ministry of Energy—and I say “we” because I supervise them and take risk accountability and responsibility for their actions through the system of government that we enjoy. The request was specific to—there were records that were responsive; there were records that were not responsive. What I would understand from this, and what I will undertake to confirm to the satisfaction of the committee is that what was pulled out of this was material that was unrelated to the request—

**Mr. Victor Fedeli:** So, let me ask a question—

**Mr. Peter Wallace:** Now, whether or not it was wise to pull it out is a separate question—

**Mr. Victor Fedeli:** Okay, that’s fine.

**Mr. Peter Wallace:** —but it would be my understanding, my contention, that this was unrelated to that. This would have been other financial information related to the Ministry of Energy.

**Mr. Victor Fedeli:** So this specific document, from you to energy: Would you have redacted this before you sent it to energy, or would energy have redacted it before they gave it to us?

**Mr. Peter Wallace:** It would not have been, to the best of my knowledge, altered by the Ministry of Finance, but again, this is something I speak of only indirectly.

**Mr. Victor Fedeli:** So, to the best of your recollection, you did not cover this up? You did not order this document to be covered up? The fact that we have a document that is covered up would suggest that someone

else did it? Are you suggesting, then, it was the Minister of Energy’s office that did that as opposed to your office? Because it is from you to the Minister of Energy.

**Mr. Peter Wallace:** I appreciate the orientation of the question, and I will try and be helpful here.

**Mr. Victor Fedeli:** Thank you.

**Mr. Peter Wallace:** When we talk about covered up, I can only understand you mean the physical covering-up—

**Mr. Victor Fedeli:** No, you’re covering up the words that are underneath there.

**Mr. Peter Wallace:** Exactly.

**Mr. Victor Fedeli:** Somebody has covered up this document.

**Mr. Peter Wallace:** I understand that. My expectation—

**Mr. Victor Fedeli:** Was it you, when you sent it to the minister?

**Mr. Peter Wallace:** It certainly would not have been me that covered this up.

**Mr. Victor Fedeli:** It was not you that covered this up?

**Mr. Peter Wallace:** Of course I would not have covered up a document that was sent in 2011.

**Mr. Victor Fedeli:** Okay.

**Mr. Peter Wallace:** My understanding would be that there was non-responsive information associated with this. It was in accordance with the ordinary practices of document disclosure—

**Mr. Victor Fedeli:** But I’m going to check with the Chair at the end, again, on my third thing to check, which basically is: When we had the Speaker’s order—I’m new at this; I would have understood that this is not like an FOI. This is an order from the Speaker to turn over all documents in an unredacted form. We’ll get to that at the end.

**Mr. Peter Wallace:** And we’ll get to that. The only thing I will say here—

**Mr. Victor Fedeli:** Yes, please.

**Mr. Peter Wallace:** Remember that we were acting—it is my view; I believe it will be a sustained view—in the very best of faith on the basis of legal advice in an area in which things are emerging, in which public servants were trying to make difficult judgments not to withhold relevant information from the committee, but in order to protect the privilege and the advice we give to cabinet in other unrelated matters.

**Mr. Victor Fedeli:** So let me make it perfectly clear, then. When you turned this document, dated December 2, 2011, over to the Ministry of Energy, it was not redacted? Somebody after you has covered this document up.

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**Mr. Peter Wallace:** I’m afraid that your question is—

**Mr. Victor Fedeli:** It’s pretty simple.

**Mr. Peter Wallace:** No, it’s not, because you’re saying that I turned the document over.

**Mr. Victor Fedeli:** Yes.



**Mr. Peter Wallace:** The document was written to me from the Ministry of Energy. I never turned the document over to the Ministry of Energy.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli, and thank you, Mr. Wallace. I will now—

**Mr. Peter Wallace:** I apologize for that, but it's a fact.

**The Chair (Mr. Shafiq Qaadri):**—offer the floor to Mr. Tabuns.

**Mr. Peter Tabuns:** Mr. Wallace, thank you for your preparation and your being here today.

Just based on your opening points, the gas plant priorities—and we'll talk about them separately—Oakville, TransCanada enterprises: suspension, relocation and securing alternative arrangements. Who set those priorities?

**Mr. Peter Wallace:** These were matters that were of intense public interest. They were commonly covered in the media. They were the subject of intense if not daily questions in the gallery. They were part and parcel of question period. It would have been very broadly and commonly understood that the settlement of these matters was of some considerable importance to the government.

**Mr. Peter Tabuns:** I think I need you to be a bit more specific. The civil service did not set these priorities.

**Mr. Peter Wallace:** Clearly, the civil servants' role in this context is to implement the policy direction of the government.

**Mr. Peter Tabuns:** So when you say the government, these decisions and priorities were set by cabinet or set by the Premier's office?

**Mr. Peter Wallace:** It is, with respect, not easy and not a straightforward question to distinguish the role of the Premier's office and the cabinet in the context. They function in an integral way and have always functioned in an integral way as the government of the day. I as secretary of cabinet don't distinguish between the support I provide to different aspects of the government. We provide support for the government, always have, always will. That will include, of course, the Office of the Premier and Cabinet Office.

**Mr. Peter Tabuns:** So there would have been a document that would have gone to the head of the civil service at the time the decision was made setting out these three priorities. Correct?

**Mr. Peter Wallace:** No, no. That is not correct. There is typically not a written policy direction of that nature associated with these items.

**Mr. Peter Tabuns:** So this was passed on to you verbally?

**Mr. Peter Wallace:** At the time, I was not the secretary of cabinet. But this would have been, with respect, commonly understood.

**Mr. Peter Tabuns:** I may come back to it later, but I'll leave it for the moment.

The investigation of the Ministry of Energy staffer by the Attorney General's department: Because you were speaking very quickly, and I appreciate you tried to get a lot of information into a short time, can you tell us again

why you ordered that investigation and who carried it out? You expressed concern that the outcome was indeterminate; if you could tell us why it was indeterminate.

**Mr. Peter Wallace:** In early October 2012, I became aware of a view held by at least one person in the Ontario Power Authority that there had been inappropriate direction—I add the word “inappropriate”—that there had been direction to the power authority regarding a release of documents requested by a committee of the Legislature.

I'm the head of the public service. These requests from the Legislature are legally binding. We take them enormously seriously, and we make every effort to provide the appropriate advice and to comply with those.

If we were to have in fact had an individual ministry officer who was acting in a way that was inconsistent with the overwhelmingly clear policy direction from senior levels of the public service that we comply honestly, directly and with integrity with an order of this Legislature or with any other relevant legally binding order, that is of enormous concern to me.

I sought to determine whether or not there was obvious validity to this allegation. The mechanism for determining something like this is typically to launch a review or an investigation. In our world, the way you do that is generally by relying on the professional advice of the Ministry of the Attorney General. We approached the Ministry of the Attorney General on the public service side to look for their support. They appropriately assigned counsel to this file. Counsel conducted a series of interviews with the individual involved who was the subject of the allegation and individuals who were part of the process associated with this.

Counsel returned to me with a verbal report indicating that they had not been able to find any concrete evidence to substantiate the allegation, that the witness, the individual involved, appeared to be truthful, that she appeared not to have, in her own mind, offered specific and highly inappropriate direction to the power authority. But because this meeting was to take place with additional counsel, with additional more senior staff available, because they had not been available at that point in time, the meeting had still proceeded. There were no appropriate documentation notes or other things taken at that meeting that would corroborate or disprove the allegation.

In that sense, we were left with—the Ministry of the Attorney General was left with, I was left with—an inconclusive report associated with that. That is a subject of considerable concern to me because there is—and you will continue in your hearings, I have every expectation, to look at the behaviour of an individual public servant, and I remain exceedingly concerned with even the potential that a public servant would have acted in a way that was completely inappropriate from the context of our legal obligations, and in fact from the policies, procedures and practices of the Ontario public service.

**Mr. Peter Tabuns:** At this point, have you effectively closed the books on your investigation in this matter?



**Mr. Peter Wallace:** There is nothing more, I am led to believe by the Ministry of the Attorney General, for us to discover through the mechanisms we have available at this point. So “close the books” would be a specific piece of language that I would not endorse, but I would say that we have nothing left to find on the file at this point.

**Mr. Peter Tabuns:** The document production order that you refer to—could we have a copy of that document production order?

**Mr. Peter Wallace:** These are the requests from the committees of the Legislature. These are the May 16 and other relevant requests—

**Mr. Peter Tabuns:** And that’s the sum total of the request that’s passed on to staff—sorry; there is not another document beyond that saying “redact this section”?

**Mr. Peter Wallace:** No.

**Mr. Peter Tabuns:** They simply get the motions passed.

**Mr. Peter Wallace:** The order that I’m referring to is the production orders—May 16, and there may be other dates as well—passed by committee or committees of the Legislature seeking a subset of documents and requiring the production of those documents.

**Mr. Peter Tabuns:** One of the concerns that we’ve had trying to find documents through freedom of information is our lack of knowledge of code names. Are you aware of any use of code names as a way of evading freedom-of-information searches?

**Mr. Peter Wallace:** Absolutely not. The use of code names is, with respect, routine. Essentially, all government transactions that involve a commercial player use a code name. It’s also my experience in working with the private sector. They similarly have code names associated with transactions. These are not designed to evade in any format, are not used by the public service to evade in any way legitimate requests for the production of documents.

**Mr. Peter Tabuns:** Okay. Thank you. When you were Deputy Minister of Finance, you were briefed by David Lindsay about costs. One of the documents released by energy is a memorandum dated December 2, 2011, days before you joined—

**Mr. Peter Wallace:** May I have that document? I’m afraid that I can’t speak to things I don’t have.

**Mr. Peter Tabuns:** Give me a second. I think it’s the one that Mr. Fedeli produced for you—

**Mr. Peter Wallace:** This document? Yes. I got it.

**Mr. Peter Tabuns:** —saying there may be costs related to the relocation of the gas power plants in Mississauga and Oakville. Were you ever briefed fully on those costs?

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**Mr. Peter Wallace:** What this document is—we ask for quarterly reports. The Ministry of Finance asks for and receives quarterly reports from all ministries. So this is a very, very routine transaction. What the ministry is doing here is outlining all of the areas in which it may face budget pressures. It then notes at the end that there may be a budget pressure associated with the relocation

of the gas plants. It obviously doesn’t know the specific number. If it did know the specific number at that point in time or if it did know if that would be a budgetary impact, it would be an obligation of Mr. Lindsay to disclose that to me, give me an understanding of how that is; we would build that into the financial projections of the province. He’s simply using this document to indicate there’s a known unknown, if you will: There’s something that he knows that might happen, but he is unable to provide a context or a cost associated with it at the rest of—I would fully expect that the rest of the document deals with things that are utterly irrelevant to the gas plants, but simply goes through whatever other issues there are associated with the Ministry of Energy at the time.

I’ve undertaken to the committee already that I will confirm that that is in fact the case and that this was not redacted in error.

**Mr. Peter Tabuns:** So was there any verbal briefing that went along with that documentation?

**Mr. Peter Wallace:** I don’t recall any such, and this was relatively early in the settlement discussions. These were not settlements that were concluded until calendar 2012, and well into calendar 2012, with the final settlements and the final aspects of that being determined in, I believe, December of that year. So the costs were indeterminate, as would be the distribution of those costs.

**Mr. Peter Tabuns:** Okay.

In July 2011, a number of emails—and I don’t have them to present to you—indicate that you were part of a regularly briefed group of senior members of the government. What was your role in Project Vapour?

**Mr. Peter Wallace:** My role in Project Vapour in 2011 was that of Deputy Minister of Finance, and the Deputy Minister of Finance is, of course—the Deputy Minister of Finance has the usual controls over—the Deputy Minister of Finance and secretary to treasury board, and essentially what I would be working on, and, to be very frank, be vigilant about, is any cost implications as they related to the province’s books. So, obviously the Ministry of Finance would be concerned about value propositions, about other aspects, but the primary aspect is, we would be tracking and trying to understand any fiscal implications for the province.

We would also have a broader responsibility to understand, as we generally do, the development of policy across the government of Ontario, any precedents it sets, any other aspects, and particularly with respect to understanding any of the financial ramifications, present or future, associated with essentially any activity occurring.

**Mr. Peter Tabuns:** And when did your role end with Project Vapour?

**Mr. Peter Wallace:** I don’t know that we can speak of a formal end to the role of anybody with respect to Project Vapour. The final settlement occurred in late 2011.

**Mr. Peter Tabuns:** And so you were part of this team right through till the end—right through to the final settlement?



**Mr. Peter Wallace:** We had very clear policy direction from the government of Ontario to undertake a process in which, working with the contract holders, the Ontario Power Authority and others would achieve the government's policy objective of shifting the plant locations from their planned locations to new locations.

The government itself relies on the public service, as is very traditional, as is the way work is done, in order to undertake that. As a result of that, public servants, myself included, would have been, as you would expect us to be, involved in the implementation of the government's policy direction.

**Mr. Peter Tabuns:** Okay. I'm just following up on a previous question about the investigation of the processing of documents and their securing and provision to the legislative committee. I am assuming that your investigation arose from a document that was provided to the opposition party and which they used in a media conference. If I'm incorrect in that, please let me know, and, secondly, were there any allegations beyond what was provided in the email to the opposition and has previously been presented in the media?

**Mr. Peter Wallace:** The allegations are consistent with the documentation to which you refer, but my concerns did not arise from that documentation. My concerns arose from a conversation with the deputy of energy, in which he informed me of his recent knowledge that there was a belief from at least one staff member in the Ontario Power Authority that there had been inappropriate direction—that there had been direction, which I then took to be inappropriate direction—associated with that, but it did not stem from that document. I believe in fact it predated the release of that document.

**Mr. Peter Tabuns:** Could you please tell us the name of the person who raised these concerns about the handling of the documents?

**Mr. Peter Wallace:** I believe that the person referred to in this context was Kristin Jenkins, but my knowledge of this is indirect or second-hand, because I received this information from the Deputy Minister of Energy.

**Mr. Peter Tabuns:** And the name of the Deputy Minister of Energy at that time was?

**Mr. Peter Wallace:** Serge Imbrogno.

**Mr. Peter Tabuns:** Thank you.

One of the things that comes up pretty constantly in the documents when we look at the TransCanada Enterprises settlement was the concern that the province felt the need to make TCE "whole." Is it possible that making them whole meant that we would be overpaying for a plant, building a plant we may not have needed, building a plant in the wrong place? What did that mean?

**Mr. Peter Wallace:** I will confess some sympathy for TransCanada in this context. TransCanada followed up on an RFQ, pursued and put money at risk with respect to a legitimate project, attempted to bring that project to commercial completion, found that it was unable to do so, found that its valid contract was in a position in which it was unlikely to be fulfilled. The company took appropriate actions, in my view, to protect its shareholder

value. TransCanada is an important player in our energy economy. It's been a partner with Ontario Power Generation, it's a shareholder in Bruce, and it has other important roles in our energy economy.

The question of the precise balance and other aspects is, frankly, not a hypothetical one, not one on which I can speculate. I can say that given the circumstances, it was the role of the public service to work with the government of the day in terms of their policy direction, work with our other partners, the Ontario Power Authority and others, in order to secure the shifting of the power plant from its originally planned location to a new location. That necessarily incurred costs.

**Mr. Peter Tabuns:** But at one point, staff were looking at not moving a plant to Lennox but actually giving TransCanada another contract to build a plant in Kitchener-Waterloo-Cambridge, and they had a huge amount of difficulty making the numbers work. What, in your mind, as public servants, did making TCE whole mean?

**Mr. Peter Wallace:** I referred to this as directly as I could in my opening comments, and if you don't mind, I'll just refer back to that.

**Mr. Peter Tabuns:** No. If you can address it, that would be useful.

**Mr. Peter Wallace:** The policy objectives included, obviously, the relocation of the plant, but they also included maintenance of commercial relationships with the proponents—

**Mr. Peter Tabuns:** I'm sorry, Mr. Wallace. Can you speak more loudly?

**Mr. Peter Wallace:** Sorry—maintenance of commercial relationships with the proponents, including securing essentially equal investment and financial opportunities. So the construct was, in your language, to hold the enterprise as whole or essentially whole in that context. That was the policy direction from the government.

**Mr. Peter Tabuns:** So that meant that the total profit that they would expect to realize over the 20-year contract with the Oakville generating station is something that would be preserved in another contract?

**Mr. Peter Wallace:** It meant that we were giving them essentially an equivalent opportunity, and in fact the equivalent opportunity related not only to the profits but also the maintenance of their role in the production of gas-fired electricity in the province of Ontario.

**Mr. Peter Tabuns:** The first I understand. The second, why would we be concerned that we make sure they continue to be a major player in gas-fired power?

**Mr. Peter Wallace:** It was the government's policy, and we tried a number of efforts. You referenced Kitchener-Waterloo. There were also other aspects in which the public service—this is not a straightforward matter.

**The Chair (Mr. Shafiq Qadri):** One minute.

**Mr. Peter Wallace:** We have a contract that needs to shift, in which there is a broad public consensus that that contract needs to shift. There is a political direction. The implementation of that political direction falls to the



public service and our agency partners. We work in good faith to explore, “Can we work something out with Ontario Power Generation? Is there a need for generation in the Kitchener–Waterloo area that provides this? Can we look at some other location around other aspects?”

The prospect that ultimately settled as the best fit for TransCanada, the best fit for the agencies involved, was the shifting of the contract to Lennox.

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When provided with a set of circumstances and a policy direction, this is what public servants do. We work to the best of our abilities to implement that direction at the best value proposition available, ensuring that that is as close to the commercial equivalent as we could provide, that being the policy direction of the government.

**Mr. Peter Tabuns:** And did—

**The Chair (Mr. Shafiq Qaadri):** I’ll need to intervene there, Mr. Tabuns.

The floor goes to Mr. Delaney on the government side.

**Mr. Bob Delaney:** Mr. Wallace, thank you very much for being here with us today.

A lot of the questions I’m going to ask you, sir, are going to be ones of clarification. I just wanted to ask if you were aware of a government motion tabled with this committee on March 5 that would have directed a government-wide search of all documents related to the relocations of the Oakville and Mississauga power plants?

**Mr. Peter Wallace:** I’m aware.

**Mr. Bob Delaney:** The motion would have required all government ministries—

**Mr. Rob Leone:** Point of order, Mr. Chair.

**The Chair (Mr. Shafiq Qaadri):** Point of order, Mr. Leone.

**Mr. Rob Leone:** I believe that document that Mr. Delaney is referring to was ruled out of order.

**Mr. John Yakubuski:** It was never adopted by this committee.

**The Chair (Mr. Shafiq Qaadri):** You’re both correct. It was ruled out of order. Thank you.

Mr. Delaney?

**Mr. Peter Wallace:** In which case, can I clarify my answers? I’m aware of the conversation and the media reports of this issue. I’m obviously not aware of something that was not done.

**Mr. Bob Delaney:** Well, thank you. Minus paragraph 2, in fact, the motion was adopted, but whether it’s in order or out of order, I was merely asking whether the gentleman was aware of it.

The motion would then have directed you, as secretary of cabinet, to set out a detailed work plan, which would include parameters and processes to identify the responsive documents. At the time, were you prepared to act on that motion if it had been passed?

**Mr. Peter Wallace:** I had not seen the motion—so you’re asking me a very, very specific question. I’m obviously prepared to act on the basis of any instruction

provided to me by this committee. In that context, I’ll answer yes. But in terms of the specifics of the motion, since I don’t have them in front of me, and the way you’ve phrased the question, I can’t confirm it. I can only say that obviously I’m prepared to answer as you would expect, that I would respond appropriately to any request from the committee.

**Mr. Bob Delaney:** As my colleague opposite noted, that part of the motion did not pass.

I’d like to ask you a couple of questions just regarding the first effort to find documents that were responsive to the motion. The motion asked for correspondence. Can you speak very briefly to what, in the context of a document search, “correspondence” means?

**Mr. Peter Wallace:** I can’t.

**Mr. Bob Delaney:** If I were to say “correspondence” would be a subset or a completely enclosed part of a definition called “documents,” would that be accurate in your view?

**Mr. Peter Wallace:** This is something that I would not speculate on. These are matters that as public servants we would take seriously, and I would not answer such a question without first referring to counsel and reviewing that specifically.

**Mr. Bob Delaney:** No, that’s fine. Okay.

A few questions of clarification around the subject of code names. The use of code names in order to protect sensitive information, not only within government but within the private sector: I would assume that’s not a very new phenomenon?

**Mr. Peter Wallace:** It’s not a new phenomenon. It’s not always to protect sensitive information.

**Mr. Bob Delaney:** Okay. What are some of the other uses within government?

**Mr. Peter Wallace:** We use them to build teams. We use them to identify things by short form.

**Mr. Bob Delaney:** Okay. In your experience, have all parties who formed government used code names in some capacity? Or has the civil service, during administrations of all stripes, used code names in some capacity?

**Mr. Peter Wallace:** The public service has used code names throughout my experience in the province of Ontario, and that obviously covers, given the 31-odd years, a range of administrations.

**Mr. Bob Delaney:** What would be the goal of assigning a code name to a specific project, to a legislative bill, to an arbitration process or to some similar circumstance?

**Mr. Peter Wallace:** There are all sorts of reasons, one of which is just tradition, another of which is, we’re probably following up on long-standing private sector traditions of calling things by code names. They’re intended to prevent the inadvertent—not in response to a legally binding document production order, but an inadvertent—release of something. If you leave something on your desk, cleaners or others will see it. It’s often-times better to have used a code name in that context. But really the simplest explanation, the explanation that



comes most to mind, is that it's a shorthand. It's a short form, and it provides a catchy approach to a short form.

**Mr. Bob Delaney:** So to encapsulate, basically to protect the province's interests, be they financial or commercial, while, for example, negotiations and discussions are ongoing.

**Mr. Peter Wallace:** I think the idea that we would correlate the use of code names, which is a highly informal routine practice, with a more formal notion of protecting the province's interests—it's not inconsistent with the province's interests, but it's done more as a matter of routine and habit. It doesn't relate to any fundamental protection of the province's interests.

To be very frank, we don't go through and have a conversation, "Is this project sufficiently important to have a code name?" or anything like that. It's something that evolves organically from the process and is not particularly unusual or of any particular import.

**Mr. Bob Delaney:** Okay. I was actually just going to explore the instances of both the Oakville and the Mississauga gas plants. Are you aware of who suggested it, or was this something that evolved organically?

**Mr. Peter Wallace:** I don't have any insight into the origin of the names.

**Mr. Bob Delaney:** So you wouldn't know, for example, whether the code names in question originated within the OPS or the Ontario Power Authority.

**Mr. Peter Wallace:** I would not.

**Mr. Bob Delaney:** Okay; that's good. In your experience, was the use of code names reasonable for the kind of negotiations that were in progress regarding these two plants?

**Mr. Peter Wallace:** The use of code names: Whether or not it's reasonable is a judgment question that I find hard to answer. It was routine, and it's part of ordinary practice. To the extent that it has been something that is ordinary, I'd consider it to be reasonable or not in any form unusual.

**Mr. Bob Delaney:** Were code names in this particular instance used as a means to either block the release of information or deny information?

**Mr. Peter Wallace:** I can speak to the role of the public service specifically in this area. It would be my view and my knowledge that the government of Ontario by policy and by practice, the public service of Ontario by policy and by practice, will respond to legitimate requests of any document production order, including, of course, the document production orders associated with legislative committees. We would not be so foolish as to stand behind code words.

**Mr. Bob Delaney:** Let's just back up a little bit, then. Regarding the use of shorthand or code names, was it a reasonable measure at the time to protect potentially commercially sensitive information?

**Mr. Peter Wallace:** The protection of commercially sensitive information from truly inadvertent release in terms of documents left lying around or inadvertently left on a subway or something like that: It might be argued that the use of a code name—presumably there's some

historic origins to the practice associated with that. To be very frank, in my experience, and I'm not familiar with the exact origin of these code names or these processes, but there is not a conversation that starts and finishes, each time we begin a commercial transaction, around the code names. They either appear or don't appear. It's just part and parcel of the regular dialogue. There's not much thought or effort put into it.

**Mr. Bob Delaney:** There was a motion passed in the estimates committee in May 2012 to request correspondence from the Minister of Energy, the Ministry of Energy and the Ontario Power Authority. I assume you're familiar with the motion.

**Mr. Peter Wallace:** I am.

**Mr. Bob Delaney:** At the time the request was made, were negotiations ongoing with TransCanada and Eastern Power?

**Mr. Peter Wallace:** Yes. The final settlements were not concluded until late 2012.

**Mr. Bob Delaney:** In your view, if details surrounding these negotiations had been made public before they were finalized—could you talk about what effect that may have had?

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**Mr. Peter Wallace:** The ordinary practices of disclosure associated with commercial discovery and other aspects, generally speaking, provide some element of protection of commercial interest and other constructs. The document production orders associated with government committees are, we have found out through legal advice, different and override the traditional statutory and other protections associated with that. Obviously, the release of information in other circumstances has different rules. When you release information under a different rule set, it engages potentially different responses.

**Mr. Bob Delaney:** Okay. I'd like to talk a little bit about the document search itself. In terms of the scope of the request, in your experience, have you ever seen a request of this magnitude from a committee?

**Mr. Peter Wallace:** I have extensive experience, and I need to think about that from my context. I do not recall one from a specific committee. We've certainly seen very extensive document production requests from others.

**Mr. Bob Delaney:** Okay. More than 56,000 responsive records were ultimately produced in respect of this request. Again in your opinion, how does the size of that response compare to other responses you've seen, whether it be in response to, for example, an FOI or otherwise?

**Mr. Peter Wallace:** It's my view that the Ministry of Energy and the deputy of energy have taken responsibility for the deficiencies in the original search but produced the documents that they felt were responsive to the request in good faith, and the resulting pile of documents—and I'm sorry for the informal language, but it was a very substantial level of disclosure.

**Mr. Bob Delaney:** Two related questions.

I'd like you to describe some of the challenges this type of undertaking might have presented for both the



Ontario public service and the Ontario Power Authority. Given that the committee requested the responsive records within “a fortnight,” what kind of difficulties would be encountered in meeting that timeline?

**Mr. Peter Wallace:** I apologize, but I can only speak to the Ministry of Energy.

**Mr. Bob Delaney:** That’s fine.

**Mr. Peter Wallace:** I cannot speak to the Ontario Power Authority with any certainty at all.

Document production requests ordinarily take place over a substantially longer period of time. The document production requests which we are most familiar with in this context are generally associated with commercial discovery and litigation. Document production requests are generally fairly burdensome. They imply a high duty on public servants in order to meet those requirements. Obviously, they need to be taken very seriously. We have an obligation to produce those records required but also an obligation to produce only those records that are responsive, not to produce other material or to maliciously comply by simply dumping inadvertent or vast amounts of irrelevant material on the table.

It’s quite challenging for public servants to review the full documentation record and make the appropriate judgments about what is included or not. That typically involves securing legal advice, trying to reach an understanding in the very best of faith about what’s included and what’s not.

That is not, to be very clear, a complaint. We as public servants understand the role of the Legislature and understand the legitimacy of the Legislature’s request. But it is something that requires some time and effort. It’s not by any means straightforward.

**Mr. Bob Delaney:** Okay. I’m sure you’re aware that there was more than one release of documents in relation to the committee’s request, the first of them being on September 4, 2012, last year. At the time, was it your understanding that all responsive records had been produced to the Clerk?

**Mr. Peter Wallace:** It’s not my understanding that that was the first release. My understanding is that there were earlier releases of material, but I could be wrong about—

**Mr. Bob Delaney:** Let me rephrase it, then. Were you satisfied that the Ministry of Energy had done their best to respond fully to the request made by the committee?

**Mr. Peter Wallace:** I’m satisfied that the Ministry of Energy responded to the request in good faith and worked appropriately to provide the documents requested by the committee.

**Mr. Bob Delaney:** Okay. Could you provide a bit more insight as to why more documents were released on October 12, 2012, and February 21, 2013?

**Mr. Peter Wallace:** It’s a question best identified to those who were close to the situation. But my understanding is that, inadvertently, there were elements left out of the original search that were related to people who, for example, had left the organization, aspects associated with that. As soon as the deputy became aware of these

errors, he moved to correct them and release the documents forthwith.

**Mr. Bob Delaney:** Was responding to this a bit of a learning process within OPS?

**Mr. Peter Wallace:** We’re still learning about these things.

**Mr. Bob Delaney:** That’s fine.

I’d like to talk to you a little bit about transition planning. During the writ period—correct me if I’m wrong—my understanding is that OPS engages in a process of preparing for the incoming government.

**Mr. Peter Wallace:** That’s correct.

**Mr. Bob Delaney:** So would it be reasonable to assume that the Ontario public service would be keeping an eye on the various campaigns and the commitments that each campaign would make?

**Mr. Peter Wallace:** We’ll certainly read the papers.

**Mr. Bob Delaney:** I’m sorry; could you elaborate on that?

**Mr. Peter Wallace:** We will keep track. As you state, we will keep track of the campaign commitments and evolving evolution of the political parties with a view to being able to work with whoever is invited by the LG to form the government, with a view to working with them and implementing their platform.

**Mr. Bob Delaney:** So in your 30-some-odd years of working with the OPS, you’ve seen several transitions where the OPS is then tasked with helping that party implement their campaign commitments, right?

**Mr. Peter Wallace:** Yes.

**Mr. Bob Delaney:** So there’s nothing unusual about a process where a political party makes a commitment during the campaign, and then that commitment is implemented by that party with the help of the OPS once they’re elected.

**Mr. Peter Wallace:** That is the routine and expected process, in my expectation.

**Mr. Bob Delaney:** Then given the degree to which you would monitor the coverage, the commitments—incoming Premier Wynne committed in her throne speech and on multiple occasions that her government would be committed to incorporating more local decision-making in the siting of such energy infrastructure projects as the two plants under consideration.

**Mr. Peter Wallace:** Mm-hmm.

**Mr. Bob Delaney:** Okay, that’s a yes?

**Mr. Peter Wallace:** The way you phrase it is awkward for me to say yes to because it’s “such as the two plants under consideration”; they’re not under consideration anymore. They’ve been relocated—

**Mr. Bob Delaney:** The two plants that were under consideration.

**Mr. Peter Wallace:** If they are examples of energy projects, then yes, I can confirm that.

**Mr. Bob Delaney:** Okay. I think we’re both doing our best to be as specific as we can here.

So you’re also, then, aware that the incoming Premier expanded the mandate of this committee to provide the



House with concrete recommendations on the siting of these plants in the future?

**Mr. Peter Wallace:** That is not something of which I am aware specifically.

**Mr. Bob Delaney:** Would you have any recommendations from your perspective and your recent experience on how future plants could be sited?

**Mr. Peter Wallace:** That's not an area I'm going to choose to speculate on. I apologize for that.

**Mr. Bob Delaney:** How am I doing on time, Chair?

**The Chair (Mr. Shafiq Qaadri):** Two and a half minutes.

**Mr. Bob Delaney:** Are there any other comments you'd like to offer the committee?

**Mr. Peter Wallace:** No. I'm happy to proceed to the next round of questions. I've confirmed my fundamental belief that the government of Ontario public servants have acted appropriately and in good faith. I'd be happy to answer questions about the role of the Ontario public service.

**The Chair (Mr. Shafiq Qaadri):** Mrs. Cansfield.

**Mrs. Donna H. Cansfield:** I just have a quick question. How many documents would you estimate are in the Ontario government?

**Mr. Peter Wallace:** Again, that's not something I'd be prepared to—

**Mrs. Donna H. Cansfield:** But there must be millions.

**Mr. Peter Wallace:** There will be a very substantial number of documents contained in the Ontario public service.

**Mrs. Donna H. Cansfield:** So it's not inconceivable that, when you're going through and looking for documents, the possibility exists that you might miss the odd one.

**Mr. Peter Wallace:** The experience we have had with commercial discovery, and it is a routine experience, is that commercial discovery, both where we are a recipient of documents and where we provide documents, is that there is oftentimes a process of rolling disclosure and that efforts in good faith typically, in fact, do not conclude with an initial disclosure, typically end up with an episode of additional disclosure. That's actually, in my view, generally an indication that the process is working and that people are working in good faith.

**Mrs. Donna H. Cansfield:** And I suspect that that's been in all governments, not just any particular one in your 31 years of experience.

**Mr. Peter Wallace:** Sure.

**Mrs. Donna H. Cansfield:** Thank you.

**The Chair (Mr. Shafiq Qaadri):** Mr. Delaney.

**Mr. Bob Delaney:** Thank you, Chair. We're done.

**The Chair (Mr. Shafiq Qaadri):** Thank you to the government side.

To the Conservative side. Mr. Fedeli, you have now 10 minutes.

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**Mr. Victor Fedeli:** I'll just take a couple, Chair; thank you. The first document batch that we had, as Mr.

Delaney outlined, was earlier, in September 2012. The second batch of documents we received on October 12, 2012—October 12. You said that we may have received that because there were people's names missing, that type of thing. Am I correct in hearing that?

**Mr. Peter Wallace:** Yes. I think the original search may not have captured people who had left the ministry, other aspects like that. Again, this is indirect knowledge; this is something that you will have an opportunity to ask more direct questions of those directly involved.

**Mr. Victor Fedeli:** The first time we ever heard of Project Vapour was in that second batch of documents that we received for the first time on October 12. This is the first day that the PC Party, the NDP—anybody—received Project Vapour documents: October 12, 20,000 documents.

Yet in the Legislature, Kathleen Wynne on September 25—this is fully three weeks before Project Vapour documents, which we saw on October 12 but you all saw in September 2011—stood in the Legislature and said, "All of the documents that have been released are the documents that were available." This is what Kathleen Wynne said on September 25, three weeks before the Project Vapour documents were released.

The Honourable John Milloy said, on the same day, "So yesterday at noon, every single document that had been requested was released.... The documents have been produced.... The case is closed. The matter is done."

On that same day, the Honourable Deb Matthews said, "The Minister of Energy has complied with the request to release the documents.... The documents have been tabled. That work has been done."

On September 25, the Honourable Rick Bartolucci said, "All the documents associated to those gas plants were released."

This was repeated by a total of 30 members of the Liberal caucus, including several cabinet ministers. This was in September 2012, when we did not receive the Project Vapour documents publicly till October 2012, yet these people, the ones I mentioned, were all recipients of many—many—Project Vapour documents. I am saying to you that these people knew there were documents that were missing. They knew of that secret name, Project Vapour. They knew the secret code name Project Vapour-lock, yet stood in the Legislature three weeks before any—even one—of those documents were released and told us that.

I say to you as well, you said to us that you are satisfied the Ministry of Energy, the Minister of Energy, responded in good faith. But you, sir, as well, in July 2011, received Project Vapour documents. Here we are in 2012—

**Mr. Bob Delaney:** Chair—

**The Chair (Mr. Shafiq Qaadri):** Just before anyone speaks, I'd just like to make it clear, Mr. Fedeli, that you are essentially accusing—which is your right, perhaps—substantial numbers of honourable members of this Parliament essentially of perjury. I just want that to be understood. And you're borderline out of order—



**Mr. Victor Fedeli:** What I am doing is repeating what they stated in the Legislature. I'm reading out of Hansard—

**The Chair (Mr. Shafiq Qaadri):** I will let you continue. You don't have to testify.

**Mr. Victor Fedeli:** I am reading out of Hansard—

**The Chair (Mr. Shafiq Qaadri):** Mr. Delaney. Point of order?

**Mr. Bob Delaney:** I do have a point of order, Chair. The Speaker has already ruled on this matter.

**Mr. Victor Fedeli:** I appreciate that, but I'm referring to this particular witness now. I am saying that on July 27, 2011—

**The Chair (Mr. Shafiq Qaadri):** Just before we continue—Mr. Delaney, just to inform you that I will not accept that point of order, although there are elements of validity, because, from our agenda, we are open to consider all these issues.

Mr. Fedeli, I apologize for interrupting you. Please continue.

**Mr. Victor Fedeli:** No, I appreciate it. Look, we're all trying to get to the bottom of this.

We had 30 members of the Liberal caucus stand up and say that. Several of them were in cabinet at the time that Project Vapour documents were released. You're telling us who received Project Vapour documents back in July. You yourself received Project Vapour documents. You have basically said to us that you take it quite seriously to oversee the public service. I would ask you, why didn't you come forward and say, "There's a file called Project Vapour that you haven't got yet in that pile of 36,000 documents"? I'm asking you that question, and I'll be asking the same question of those other members.

**Mr. Peter Wallace:** I remind you, with reference to the lengthy preamble to the question—

**Mr. Victor Fedeli:** I'm sorry?

**Mr. Peter Wallace:** I remind you, with respectful reference to the lengthy preamble to the question, that I can only speak to those matters pertaining to the Ontario public service. You are asking a question about the role of the public service. I believe that you are offering a direct challenge to me, and let me offer you a very direct assurance that we provided, through the Ontario public service, documents that we understood were responsive to the request of the committee.

I believe you have a substantial business and commercial background. I believe you've understood and known some considerable business success. I believe you will understand as a legislator, as a parliamentarian, that it is the role of public servants to respond specifically to the specific requests of the committee. We responded specifically to the best of my ability, to the best of our ability. I have an opportunity to review with the deputy. I believe that he did not intentionally withhold or obstruct or in any way retard the efforts of this committee. There's no way he would do that.

**Mr. Victor Fedeli:** So did you turn Project Vapour documents over—

**Mr. Peter Wallace:** Now, to be very clear—to be very clear—we provided the information to which the committee asked and to which the committee was entitled. That was our fundamental objective, our fundamental goal in conjunction with that.

How that information is used and the interpretations that legislators, you and others, take from that—we do not owe you any obligation in terms of the interpretation of that information.

You ask a direct challenge to me—

**Mr. Victor Fedeli:** Yes.

**Mr. Peter Wallace:** If you had asked me at the time, you know, were there other things involved, I would have provided you with that direct answer. We were not asked that question. We were asked to produce the documents. We produced the documents. That is the role of the public service—

**Mr. Victor Fedeli:** So did you produce Project Vapour documents to the organization that you turned them over to?

**Mr. Peter Wallace:** We produced all of the relevant documents as we understood them to have been requested by the committee.

**Mr. Victor Fedeli:** Would that cabinet document with your name on it have been turned over?

**Mr. Peter Wallace:** The document request—

**Mr. Victor Fedeli:** In your opinion.

**Mr. Peter Wallace:** The document request, as I understand it, was to the Ministry of Energy. The Ministry of Energy would not have had, as I understand it, the specific document available—

**Mr. Victor Fedeli:** So there's a "Rick Jennings (Energy)." Would he be with the Ministry of Energy at the time, then?

**Mr. Peter Wallace:** He may or may not have had it, but if he did, and it was in his records, it should have been produced.

**Mr. Victor Fedeli:** I asked you earlier, would a minister have had to sign off on that? You don't think it was the Minister of Energy, then, who signed off on this energy plant?

**Mr. Peter Wallace:** The Minister of Energy would have, of course—the then Minister of Energy, yes.

**Mr. Victor Fedeli:** Okay. So again, we don't have these documents back when those 30 people stood up. So I'm asking you again, would you have turned over, in your opinion, the documents that had Ministry of Energy's people's names on them, would you have turned over those documents that said "Project Vapour" and details on TransCanada, named in here as TransCanada—would you have turned those documents over?

**Mr. Peter Wallace:** The relevant documents, if they fell into the set of documents requested by the public service, requested of the Ministry of Energy, should have been turned over, and it's my belief were turned over.

**Mr. Victor Fedeli:** From your office to the Ministry of Energy?

**Mr. Peter Wallace:** My office was not requested by the Ministry of Energy to produce any documents. The



requests, with respect, were to the Ministry of Energy. They were not requested for the Ministry of Energy to go to Cabinet Office to ask for documents—the only request for documents in the possession of the Ministry of Energy.

**Mr. Victor Fedeli:** So therein lies the rub with these code names, right? We asked for power plant documents. Because it's called Project Vapour, do you think they felt, in the first batch, until something got the better of them for the second batch, when all the Project Vapour files finally submerged—do you believe that?

**Mr. Peter Wallace:** Let me take a step back. With the indulgence of the committee, let me take a step back.

**Mr. Victor Fedeli:** I'm sorry?

**Mr. Peter Wallace:** With the indulgence of the committee, allow me to take a step back.

**The Chair (Mr. Shafiq Qaadri):** I'll need to intervene there. I apologize. Now to the NDP side, Mr. Tabuns. Ten minutes.

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**Mr. Peter Tabuns:** Thank you, Mr. Chair. Mr. Wallace, did you want to just finish that statement?

**Mr. Peter Wallace:** I do.

**Mr. Peter Tabuns:** Then please—

**Mr. Peter Wallace:** Thank you. I appreciate the courtesy in this context.

The Ontario public service, of which I am privileged to be the head, has no interest in the concealment of information in this area. If it does, then we have made very serious mistakes and there should be serious consequences associated with that. We were required by law—emerging, complicated, difficult-to-understand law, but nevertheless by law as we understood it—to provide the production of a range of documents in response to the request. The request itself was very specific. It was to the Minister of Energy, to the Ministry of Energy and to the Ontario Power Authority. I can assure you that I'm not aware of any instance in which public servants withheld documents that were appropriately included in that search.

So from that standpoint we come to the committee with an effort to be helpful. If you want additional documents, additional requests, want to broaden the search terms, then there is an appropriate forum to direct public servants in order to obtain the broader information. The use of code words and other things should not and in my view did not obstruct the provision of information. What has been a barrier—and when we talk about “therein lies the rub,” what has been a barrier has been the specificity of the request. Because remember, we are trying to produce documents responsive to the request. That is at least part of the challenge. Remember that we work in an environment that requires us to get legal counsel, an environment where we take our responsibilities associated with disclosure very, very earnestly and directly. So in this context I speak of the role of the public service. We have been clear, in my view, have been working in good faith.

There is absolutely no doubt that we have made errors. There is absolutely no doubt that in the production of a large number of documents there were slip-ups. And these slip-ups were partly as a result of urgency, but partly as a result of people just not thinking things through. We've learned important lessons from that around our document search protocols, about how we treat people who are away on holidays, how we treat the files of those who have left, all of those other things. We'll continue to try and comply with all the legitimate document requests in the very best of faith.

My apologies for that—

**Mr. Peter Tabuns:** No, I understood that you wanted to make that statement. I appreciate the clarity.

I have some questions for you.

The relationship between the Ontario Power Authority and the government of Ontario—what does “arm's length” mean in the understanding of the civil service?

**Mr. Peter Wallace:** The governance of it is established by a series of formal and informal protocols, but the ordinary practice of the corporation is to act independently of the government of Ontario. Hiring, firing, staffing—all of those things are under the purview of the CEO, who is hired. The administration is overseen by the board.

**Mr. Peter Tabuns:** Does the government of Ontario have the ability to simply direct the OPA to do one action or another?

**Mr. Peter Wallace:** They do. By statute there is a provision that allows—and this is my recollection; you'll need to check this directly. My recollection is there is a directive-making power established in the legislation that allows the Minister of Energy to specifically direct the Ontario Power Authority.

**Mr. Peter Tabuns:** Maybe I've missed something here, but why do I consider them at arm's length if in fact I can drive them wherever I want to drive them?

**Mr. Peter Wallace:** It's a fairly common form of governance, and for many, many decades—this is common in virtually all forms of government. We have these enterprises that have a quasi-private, quasi-public purpose. The idea of the OPA was to allow it to be a credit-worthy counterparty to establish new sources of energy production, backstop that financially, and to allow it to operate on commercial terms. It is also an instrument of government policy. In order to, as I understand it by statutory design, allow it to have both of those functions, it is expected to function ordinarily on a commercial basis, but in specific circumstances if the government wants to provide it with a policy direction in which it would not operate on a commercial basis, it's available to the government to offer and then publish a specific policy direction associated with a specific action—

**Mr. Peter Tabuns:** Thank you for that.

**Mr. Peter Wallace:** —and that exists in that and a variety of other crown corporation mechanisms. It's fairly common.

**Mr. Peter Tabuns:** Okay. In your opening notes today, you said, “I note as well that my predecessor took



measures to impose a screen on further involvement by selected political staff in the Oakville matter after becoming aware of an early outreach by those staff to the proponent.”

Which political staff were reaching out to Trans-Canada enterprises, and what were they doing?

**Mr. Peter Wallace:** My understanding is that Shelly Jamieson and—I’m sorry, the other name is on the tip of my tongue; I’ll come up with it in a minute, and if I can’t, I’ll make sure it gets to you—were engaged in early outreach to the company. I don’t know the purpose of the outreach.

*Interjection.*

**Mr. Peter Wallace:** Sean Mullin. Excuse me.

**Mr. Peter Tabuns:** Okay. So, “impose a screen”—effectively, “Stop doing that.”

**Mr. Peter Wallace:** Yes. I think the specific concern Ms. Jamieson had was that there was threatened litigation and they might be a witness or a party—they might be included in the legal aspect and potentially open the government to additional exposure, and she wanted to ensure that that was limited.

**Mr. Peter Tabuns:** Okay. You’re familiar with the private power contracts for provision of power in the province of Ontario?

**Mr. Peter Wallace:** I’m certainly familiar with the basic constructs of them, yes.

**Mr. Peter Tabuns:** Can you tell us generally what rate of return is set for investors?

**Mr. Peter Wallace:** I’m afraid I don’t know that specifically.

**Mr. Peter Tabuns:** Okay. One of the things we encountered time and again, as we went through the documents, was the apparent risk that was run in these private power contracts: that if we were to terminate them, we may be stuck with paying not just for the physical losses of putting a foundation on a site, but 20 years’ worth of profits. How substantial was that risk in your mind in dealing with these two contracts?

**Mr. Peter Wallace:** I can’t speak to understanding the risk. What I can speak to is the policy direction provided to us by the government, which was to ensure the relocation of the plants on terms for the proponents that were similar to the original business proposition they had signed up for.

**Mr. Peter Tabuns:** So you were not involved at any point in assessing the risk of this or that course of action with regard to these plants?

**Mr. Peter Wallace:** Not me specifically.

**Mr. Peter Tabuns:** Were you familiar with the problems encountered by Eastern Power Developers in getting financing for the Greenfield South power plant?

**Mr. Peter Wallace:** Only retrospectively.

**Mr. Peter Tabuns:** Did you not find it unusual that a company with a guaranteed 20-year contract with a very substantial customer like the Ontario Power Authority wasn’t able to get financing?

**Mr. Peter Wallace:** I spoke earlier about the challenges associated with implementing the government’s

policy direction on this file, and I made reference in that context, maybe a touch too obliquely, to the challenges associated with the contracts themselves and then with the financial and other backers associated with that. I think it’s fair to say that those who were engaged in the relocation discussion found additional barriers to the relocation discussion associated with the financial backstop contracts that had been entered into by Greenfield, yes.

**Mr. Peter Tabuns:** And what were those additional barriers they encountered?

**Mr. Peter Wallace:** That the interest rates were high and that the provisions associated with it provided the financial backstop with a fairly high degree of recourse.

**Mr. Peter Tabuns:** And if these had been publicly owned and publicly financed, would we have faced the same sorts of barriers?

**Mr. Peter Wallace:** Obviously I can’t speculate about that.

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Peter Tabuns:** Really? You have not looked at a comparison between the public and private financing of power in your course in energy, finance and now in cabinet?

**Mr. Peter Wallace:** If you really want an answer, in my 31 years, I’ve also seen \$17 billion worth of unfunded liability coming out of Ontario Hydro and I’m not prepared to make a definitive proposition conclusion about the risk of public versus private power.

*Interjection.*

**Mr. Peter Tabuns:** No, no.

Did you have any involvement with the decision to pay for the cancellation of the Mississauga plant through general revenue rather than from hydro rates?

**Mr. Peter Wallace:** I understood the dialogue occurred and I may have had a peripheral involvement in the conversation, yes.

**Mr. Peter Tabuns:** And do you know why that decision was made—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns. I’ll intervene there. The last round of questioning is to the government side, Mr. Delaney: 10 minutes.

**Mr. Bob Delaney:** Thank you very much, Chair. Just before I begin, I’d like to raise a brief point of order. After we’re finished with Mr. Wallace, may I propose just a five-minute break before we get on to the next witness?

**Mr. John Yakubuski:** That’s the first good motion you’ve made at the committee. We’re with you.

**The Chair (Mr. Shafiq Qaadri):** You have overwhelming support, Mr. Delaney. Please enjoy it.

**Mr. Bob Delaney:** Okay.

The second one is a point of privilege, Mr. Chair. I’d like to table with the committee a copy of Hansard from this committee, from March 5, where the government in fact moved a motion to do what Mr. Fedeli was asking Mr. Wallace about, which is to expand the document search government-wide. Though one paragraph on political parties was ruled out of order, the motion, minus



that one paragraph, was in fact put to a vote. As is very clear, all opposition members did vote against that motion. I just put that as a—

**The Chair (Mr. Shafiq Qaadri):** We accept your document. Ruling forthcoming later. Please continue.

**Mr. Bob Delaney:** Thank you very much.

Mr. Wallace, thank you for your time. In light of the questions that we've asked, I'd like to ask you just an open-ended question: Is there a point or a series of points that you would like to make to conclude your time with us here today?

**Mr. Peter Wallace:** No, I'm comfortable with the testimony I've provided. I've answered the questions.

**Mr. Bob Delaney:** Thank you very much, sir. I don't think we have any further questions. Chair, I believe we're done.

**The Chair (Mr. Shafiq Qaadri):** All right. Thank you, Mr. Delaney. Thank you to the government side.

I'd like to thank you, Mr. Wallace, for your presence, for your continued stewardship as secretary of cabinet and also for appearing before this committee from, no doubt, your otherwise free day. Thank you.

**Mr. Rob Leone:** Mr. Chair?

**The Chair (Mr. Shafiq Qaadri):** We're in recess for five minutes, as agreed, and you may now speak to me.

*The committee recessed from 1632 to 1644.*

**The Chair (Mr. Shafiq Qaadri):** The committee is now back in session—as you know, deliberating all day.

I believe we have a motion from Mr. Fedeli. I'd invite you to please read it into the record, Mr. Fedeli.

**Mr. Victor Fedeli:** Pursuant to standing order 110(b), whereby each committee shall have power to send for persons, papers and things, the Standing Committee on Justice Policy hereby instructs the secretary of cabinet to produce by 11 a.m. on the fortnight from the passage of this motion, any and all documents, correspondence, emails, attachments, missives, notes or any communications without redaction outlined below related to the Oakville and/or Mississauga gas plants, including but not limited to any document under any circumstance hidden or covered by a code name and that the following be provided:

(1) List of names, titles and roles of all political staff in the Premier's office, the office of the Minister of Finance and the office of the Minister of Energy, past or present, who were involved with or had knowledge of the planning, spending, locating, cancelling and/or relocating of the Mississauga and/or Oakville gas plant matters;

(2) A list of the names of all ministers present during any and all cabinet meetings or cabinet committee meetings where either the Oakville or Mississauga gas plants were discussed, or where ministers were briefed, provided documents and/or where decisions were rendered;

(3) All documents ordered under the scope of the original document production order as issued by the Standing Committee on Estimates and that it be expanded to include, as defined above, all documents—with emphasis, "all documents"—regardless of status or privilege from the Office of the Premier, the cabinet office, the

Ministry of Finance and/or the office of the Minister of Finance without redaction or any alteration; and,

(4) That four sets of the above documents be printed in paper and delivered to the Clerk for distribution to each caucus of a recognized party, and that the fourth batch be turned over to the Library of Legislative Assembly; that the government provide all documents in searchable electronic format.

**The Chair (Mr. Shafiq Qaadri):** Before we entertain any comments, I'm going to have to recess the committee one more time in order to rule whether this is in order or not. So the committee is now in recess, most likely indefinitely.

*The committee recessed from 1646 to 1700.*

**Mr. Victor Fedeli:** Mr. Chair, I would like to withdraw the motion before the committee is back in session.

**The Chair (Mr. Shafiq Qaadri):** Thank you, ladies and gentlemen, for your endurance and patience. The motion is out of order.

Mr. Fedeli, I acknowledge your somewhat late but nevertheless noble attempt to withdraw the motion.

MS. JOANNE BUTLER

**The Chair (Mr. Shafiq Qaadri):** I would now invite our next presenter to please come forward. J'ai le plaisir maintenant d'inviter JoAnne Butler to please come forward.

Ms. Butler, thank you for coming. Just before I read to you the protocol, I invite you to please be sworn in. Please be seated.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Do you solemnly swear that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

**Ms. JoAnne Butler:** Yes.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Ms. Butler. As no doubt you've seen the protocol, we'll have rotating time frames, 20/20/20, 10/10/10. You have at the outset, at the front end, five minutes in which to make an opening statement, and I invite you to please begin now.

**Ms. JoAnne Butler:** Thank you, Mr. Chair. I am vice-president of electricity resources for the Ontario Power Authority. My department is responsible for procuring generation sources, providing policy and analysis advice, and administering the contracts of electricity generators.

I graduated from the civil engineering program at Queen's University, and I have worked in the energy sector for 35 years.

Prior to joining the OPA in 2008, I was president of TransAlta Mexico, where I was responsible for the day-to-day operations during the construction, start-up and operation of its two Mexican gas-fired electricity generation plants. Before that, I was TransAlta's Calgary-based general manager for western operations and responsible for the operation of four new generation stations.

I also worked in the oil and gas exploration sector for Amoco Corp. for 21 years in Canada and abroad.



I am proud of the key role the Ontario Power Authority has played in stabilizing Ontario's electricity supply by procuring and overseeing new sources of generation. Since its inception in 2004, the OPA has contracted for 16 new natural gas facilities in Ontario, including the plants that are of particular interest to this committee.

I want to advise you, though, upfront that although many of my own documents have been disclosed to you, I have had no involvement in the document disclosure process at the OPA.

In my position at the OPA, I've been involved in the planning, procurement and relocation of the Oakville generating station and in the contract administration and relocation of the Mississauga plant.

On Oakville first: As a courtesy to the committee, I have provided the Clerk with a backgrounder on the procurement process for the Oakville generating station.

In August 2008, the Ministry of Energy directed the OPA to competitively procure a new gas-fired generation plant in the southwest GTA. As a result of this, the OPA signed a contract with TransCanada Energy on Sept. 30, 2009.

On October 7, 2010, the Minister of Energy announced that the plant would not proceed. We eventually determined that TransCanada had spent \$40 million in developing the Oakville plant to that stage. These are sunk costs and represent spending on goods and services that could not be used at a new location.

On September 24, 2012, the OPA and TransCanada agreed that TransCanada would develop a 900-megawatt natural gas station at the site of Ontario Power Generation's Lennox generating station in Napanee.

A memorandum of understanding, which was made public on September 24, stated that there would be other costs to the relocation in addition to the \$40 million in sunk costs. This included the extra costs to get gas to the plant in Lennox and for connecting the plant to the province-wide transmission system.

Given the uncertainty of some of these costs and the desire to lower risk for electricity customers, the OPA agreed to take on some of these costs directly. In exchange, TransCanada accepted a lower monthly payment.

The OPA has been clear since the time the decision was made to cancel the Oakville plant—and the relocation of the Mississauga plant that transmission is needed as a replacement in the west GTA sooner than originally planned. We also have been clear that there is a cost associated with advancing the schedule.

The contract with TransCanada Energy was finalized on December 14, 2012, based on a memorandum of understanding and a directive from the Minister of Energy.

To Mississauga: The Ministry of Energy procured the 200-megawatt Mississauga Greenfield South plant before the OPA was established, and we assumed responsibility for it in 2005. Construction began in May 2011.

Following the election in October 2011, the government instructed OPA to stop construction of the Greenfield South plant.

The OPA eventually determined that the sunk costs for the Mississauga facility were \$190 million. They are higher than the Oakville sunk costs because construction had started. As with the Oakville plant, there are other costs in addition to the sunk costs for relocating the plant.

On July 10, 2012, the Minister of Energy announced an agreement to relocate the plant to Lambton, near Sarnia.

The government was a party to the negotiations that resulted in the relocation of both power plants. In the case of the Oakville plant, it was represented by the Ministry of Energy and by Infrastructure Ontario. For the Mississauga plant, the government was represented by Ministry of Energy staff, and also hired a third-party negotiator.

Overall, the OPA did its job, and I will be pleased to answer—

**Le Président (M. Shafiq Qaadri):** Merci beaucoup, madame Butler, pour vos remarques introductoires. Je passe la parole maintenant à M. Tabuns de la NPD. Vingt minutes maintenant.

**Mr. Peter Tabuns:** Thank you, Mr. Chair, and thank you, Ms. Butler, for being here this afternoon. I appreciate it.

For months, the Liberal government has said that the cancellation of the plant in Oakville cost \$40 million. Sometimes they're more careful: The former Minister of Energy said \$40 million in sunk costs and didn't go beyond that. Sometimes they're a bit looser: The former Premier said "\$40 million, we nailed it." Recently, Mr. Chiarelli has said "\$40 million: The number could be wrong; we relied on the OPA to do the contract analysis."

Can you comment on whether or not the government knew that there were more than \$40 million in costs associated with this cancellation?

**Ms. JoAnne Butler:** The OPA has been very specific that the \$40 million were sunk costs that could not be repurposed at a new site. The memorandum of understanding, which the government was a party to, also indicated that there were going to be additional costs. They were TBD at the time—

**Mr. Peter Tabuns:** TBD?

**Ms. JoAnne Butler:** —to be determined, because of some other engineering work that had to be done. But they were party to that memorandum of understanding and knew that there were going to be other costs associated with relocating the plants.

We'd also been very clear, and it was noted in their long-term energy plan, that if the generation solutions did not go ahead in the southwest GTA, we would need to bring forward the transmission solution from 2029 to 2019.

**Mr. Peter Tabuns:** And that cost, if I remember correctly, is around \$200 million, or that was the amount budgeted by the OPA.

**Ms. JoAnne Butler:** Well, our view is, you know, it's one or the other. Our view is, if you're going to a transmission solution, which is a perfectly acceptable way to increase the reliability, we've assumed the differ-



ential costs in moving that capital investment forward. And that's the number we're using as the cost of transmission.

**Mr. Peter Tabuns:** So the Minister of Energy—or the Ministry of Energy, if he has not yet been fully briefed—would have been fully aware that the costs were greater than \$40 million when the decision was made to cancel and relocate. Is that a fair statement?

**Ms. JoAnne Butler:** I can't comment on the briefings of the minister.

**Mr. Peter Tabuns:** The government was involved and saw the memorandum of understanding, the MOU?

**Ms. JoAnne Butler:** They were at the negotiating table, represented by Infrastructure Ontario, and they also had their own legal counsel, as well as the OPA.

**Mr. Peter Tabuns:** And who was the person at the negotiating table from Infrastructure Ontario?

**Ms. JoAnne Butler:** At the time of the contract, the memorandum and going forward to the contract, it was their CEO, Bert Clark.

**Mr. Peter Tabuns:** Okay. So it wasn't just the OPA that understood that \$40 million was only a part of the cost. The government understood, or at least Mr. Bert Clark and the Ministry of Infrastructure would have understood, that there was a lot more than \$40 million riding on this.

**Ms. JoAnne Butler:** Well, the government was a party and signed the memorandum of understanding, so they were aware of what was in the memorandum of understanding.

**Mr. Peter Tabuns:** Okay. Can you go through the number of elements that we have to factor in as costs to ratepayers or taxpayers in Ontario for this cancellation? Obviously, there were the sunk costs, and then there's the cost of building transmission lines that would not have been needed at this point if the plant had gone ahead. Were there other costs that we should be aware of?

1710

**Ms. JoAnne Butler:** So, the costs can be bucketed, as you've started out—yes, there were sunk costs. Yes, there were costs to the transmission system, to upgrade the transmission system, because the plants were moved to a new location. There were other costs that were very project-specific to the project: to connect its gas and to connect its electricity connection. There were other costs associated with gas services in the Napanee contract—

**Mr. Peter Tabuns:** Which contract? I'm sorry.

**Ms. JoAnne Butler:** The Oakville—now Napanee—contract, if you will.

**Mr. Peter Tabuns:** Okay.

**Ms. JoAnne Butler:** There were costs associated with us taking on the gas demand and management services—yes. They were all outlined in the memorandum of understanding.

**Mr. Peter Tabuns:** And the gas demand and management services: Do you personally have a net present value for that?

**Ms. JoAnne Butler:** Yes, we do.

**Mr. Peter Tabuns:** Can you tell us what that number is?

**Ms. JoAnne Butler:** Yes. Using a couple of different discount rates, we do have a range of numbers for that. Our estimation is \$319 million to \$476 million.

**Mr. Peter Tabuns:** So, in fact, that's consistent with the numbers that Mr. Bruce Sharp presented to us. He said somewhere in the mid \$300 million.

**Ms. JoAnne Butler:** I can't comment on his analysis.

**Mr. Peter Tabuns:** No. Sorry; more for my reference than yours, your figures have a range that is similar to his. The government would have been aware, given that they signed the memorandum of agreement, that these costs were going to be on the government's shoulders?

**Ms. JoAnne Butler:** They knew that. That was part of the memorandum of understanding, yes.

**Mr. Peter Tabuns:** Okay. What role did the government have in negotiating the TransCanada Enterprises agreement?

**Ms. JoAnne Butler:** Are you referring to the original one or the new one?

**Mr. Peter Tabuns:** The new one; sorry. From the date of cancellation, what was their role, their involvement, in the negotiations?

**Ms. JoAnne Butler:** There was no direct involvement with the government. After the cancellation of the plant, it was left to the OPA to come up with a new arrangement that would provide value to the electricity ratepayer and move forward with a new project. There was no direct involvement at that time.

**Mr. Peter Tabuns:** Okay. On October 18, 2010, you wrote to Michael Killeavy, saying "government has backed us into a corner ... doubt that we will be allowed to go to litigation so let's just get on with it and see what options they can put forward." Can you explain what corner they put you in and how they put you there?

**Ms. JoAnne Butler:** The government had been talking to TransCanada without, certainly, my knowledge and had made certain commitments around the contract. We were asked to look at those commitments and repurpose that into a valuable project for the ratepayer.

**Mr. Peter Tabuns:** And when we say "government," are we talking about the Premier's office? Are we talking about the Minister of Energy? Who, precisely, are you talking about when you refer to the government?

**Ms. JoAnne Butler:** The gentlemen that I was talking to—one was from the Premier's office and one was from the minister's office.

**Mr. Peter Tabuns:** And the one from the Premier's office was?

**Ms. JoAnne Butler:** Sean Mullin.

**Mr. Peter Tabuns:** And the one from the minister's office?

**Ms. JoAnne Butler:** Craig MacLennan.

**Mr. Peter Tabuns:** Okay.

**Ms. JoAnne Butler:** Or did I get those backwards? Sorry.

**Mr. Peter Tabuns:** I don't know if you got them backwards.

**Ms. JoAnne Butler:** Sean Mullin was from the Premier's office and Craig MacLennan was from the minister's office.

**Mr. Peter Tabuns:** Okay, fair enough.

On October 18, 2010, Deborah Langelaan, manager of contract management, wrote, "Last Friday afternoon JoAnne, Ben"—Chin—"and I met with representatives of TransCanada to discuss the repudiation of the SW GTA contract. It was the inaugural meeting and it went well. TCE indicated that their preference is to move the facility to another location and they suggested it was also the province's preference."

Can you explain why the government was negotiating with TransCanada before you were?

**Ms. JoAnne Butler:** No, I can't explain that.

**Mr. Peter Tabuns:** Okay. Is it standard practice for them to do this?

**Ms. JoAnne Butler:** Not—that was the first time I'd seen that happen in my tenure with the OPA.

**Mr. Peter Tabuns:** All right. And again, when you say "the province" in these matters, who are you talking about?

**Ms. JoAnne Butler:** Again, generally my counterpart is in the minister's office or the bureaucracy, the ministry.

**Mr. Peter Tabuns:** Okay. What was Ben Chin's role in all these discussions, given that he was doing communications?

**Ms. JoAnne Butler:** I can't comment on what Ben was doing or saying. I was not in those conversations. He was our VP of communications and stakeholder relations and government relations.

**Mr. Peter Tabuns:** But he was part of the group that, with you, met with TransCanada Enterprises?

**Ms. JoAnne Butler:** He was at some of the initial meetings, yes.

**Mr. Peter Tabuns:** And his role in those meetings was?

**Ms. JoAnne Butler:** I think in his role as vice-president of government relations and stakeholder relations, he wanted to be involved in where the negotiations were heading.

**Mr. Peter Tabuns:** On November 17, 2010, Michael Killeavy wrote to you, saying, "Gov't has I think promised an agreement with TCE by 15 December. This is far too soon. We don't even know what we're building yet. No one seems to know what the gov't promise of 'keeping TCE whole' means. Is it the profit earned at OGS or matching the rate of return? How do we reach agreement if we don't know what was promised?"

"This is really a mess. Far too many people involved and no one accountable for making decisions. We are going to get into trouble."

I asked Mr. Wallace earlier, and I need to understand what your thinking was, so I can understand what instructions you received. What did keeping TransCanada whole mean?

**Ms. JoAnne Butler:** We weren't quite sure because we weren't involved in the commitments, in the meetings

that commitments were made to TransCanada. Our assumption was that they wanted the financial value of their contract. But we shared Mr. Killeavy's concern about clarity and what we were supposed to do.

**Mr. Peter Tabuns:** Again, who was it who had met with TransCanada Enterprises and said, "We will keep you whole" with this?

**Ms. JoAnne Butler:** I do not know.

**Mr. Peter Tabuns:** Okay.

Did that put you in a very difficult bargaining position?

**Ms. JoAnne Butler:** Yes, it did.

**Mr. Peter Tabuns:** Did it mean that there was very little you could actually do to get a better deal for Ontarians?

**Ms. JoAnne Butler:** Not necessarily, no. Once the decision was made to not proceed with those projects, it was our responsibility then to parlay that into another commercially reasonable deal. That was where our efforts went.

**Mr. Peter Tabuns:** The comment "We are going to get into trouble": What sort of trouble were you and your colleagues concerned about at this time?

**Ms. JoAnne Butler:** The issue at that time was the quality of the information that we were receiving in order for us to do the work that we needed to do and to do our analysis. I suspect that comment was about—we're not going to be doing the proper job that we need to do, which is protect the interests of the ratepayer, check the veracity of the information and do our analysis.

**Mr. Peter Tabuns:** So, in other words, you didn't have the fundamental tools you needed to make sure we got the best possible deal for ratepayers in Ontario.

**Ms. JoAnne Butler:** At that time, we had serious concerns that we did not have the data that we required to—when we came forward under a situation like this or an auditor—that we could do what we needed to do and relocate that plant.

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**Mr. Peter Tabuns:** Okay. On January 26, 2011, you and Michael Killeavy—I'm sorry, am I pronouncing that name correctly?

**Ms. JoAnne Butler:** Yes.

**Mr. Peter Tabuns:** I am? Okay—discussed a meeting you were going to have with TransCanada. In an email, Mr. Killeavy said, in regard to the settlement discussions:

"Okay, I understand. The messages will be:

"(1) We know nothing of any express financial commitment to be included into the deal. TCE needs to go to the guys that allegedly made this deal to get instructions in writing to the OPA."

Who were the guys who allegedly made the deal?

**Ms. JoAnne Butler:** The conversations that TransCanada had with the government, wherever they were, prior to letting us know what those commitments were.

**Mr. Peter Tabuns:** And so you never knew who TransCanada was talking to or negotiating with?

**Ms. JoAnne Butler:** Honestly, no. I do not know.



**Mr. Peter Tabuns:** Did you ever get that express financial commitment in writing?

**Ms. JoAnne Butler:** No.

**Mr. Peter Tabuns:** On November 30, 2011, you emailed Michael Killeavy, who was director of contract management at the OPA, and you wrote:

“Mike, this is frightful ... as we have discussed in the past, I have a huge issue around overall governance. We hold the contract, and the gov. is making deals around us. Surely, our board must be starting to get uncomfortable with this. Is it not time to assign the contract to the gov. and let them get on with doing what they want since, as they keep telling us, it is mostly their nickel anyway.”

This was more than a year after the contract was cancelled. What were the circumstances that caused you to write this?

**Ms. JoAnne Butler:** Okay. It goes back to the very initial concerns that we had that we were not getting the data that we needed. A piece of paper, a pro forma, is not going to stand up to the integrity of an auditor or a committee. We needed to get information. We needed to get information that supported the financial outcomes and basic information about developing a power plant.

It ended up that the OPA and TransCanada deals did break off, and the government brought in Infrastructure Ontario. Infrastructure Ontario was then charged with—and we agreed that we would go to arbitration and let a third party determine the value. That quote was around, going to the arbitration agreement, and my concern in that quote was, even going forward in arbitration, they were still holding back documents and document disclosure. It was very concerning to me, because one of the fundamental tenets of arbitration is fulsome document disclosure.

**Mr. Peter Tabuns:** And when you talk about holding back on document disclosure, you’re talking about TransCanada at this point?

**Ms. JoAnne Butler:** Yes. We ultimately got them, but that quote was around, “We’ve been at this for a year now to get good data. We’re going to arbitration to get good data, and we’re still getting some resistance in terms of disclosing the documents.”

**Mr. Peter Tabuns:** So you were trying to deal with TransCanada, and if I read this correctly, at the same time the government was negotiating around you.

**Ms. JoAnne Butler:** At that point, Infrastructure Ontario was taking the lead in the negotiations with TransCanada. We were playing supporting roles in the planning—potential locations, engineering analysis, getting third-party, independent vetting of the data etc.

**Mr. Peter Tabuns:** And who at Infrastructure Ontario, which individuals, had carriage of this file?

**Ms. JoAnne Butler:** David Livingston was the lead on this file.

**Mr. Peter Tabuns:** All right. On September 21, 2011, again, Mr. Killeavy wrote to you regarding the Mississauga cancellation, saying, “It’s OGS all over again.” What did that mean to you?

**Ms. JoAnne Butler:** I think the government’s been very clear that they made the decision to cancel both

those plants, and they’ve been very clear as to why they cancelled those plants.

**Mr. Peter Tabuns:** So, effectively, it was the same experience you’d had. You were given responsibility to sign a commercial agreement with a generator. You proceeded with that, and without your involvement, a decision was made to cancel the contract, and you were simply told to go off in that direction?

**Ms. JoAnne Butler:** Well, there was a forewarning of it as an election promise. Then we got a letter from the minister that said to deal with Greenfield South.

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Peter Tabuns:** Okay. Michael Lyle, the OPA general counsel, wrote that it might be better to fudge who was actually engaged in ongoing negotiations with TCE by just starting with “discussions are ongoing”. Why would this have been necessary at that time?

**Ms. JoAnne Butler:** I don’t understand the context of that from—

**Mr. Peter Tabuns:** Fair enough. Emails around December 10, 2010, discuss a draft directive, in which Michael Killeavy asks, “Could we put an ‘out’ option in the directive that states that if we can’t negotiate an agreement with TCE that is in the best interests of the ratepayer, we don’t need to conclude an agreement at any cost?” What happened to that directive?

**Ms. JoAnne Butler:** So that directive never—

**The Chair (Mr. Shafiq Qaadri):** With apologies, I’ll need to intervene there, Mr. Tabuns.

Before I hand it over to the government side, just to let the committee members know: Unlike everything else in this place, this committee does not expire at 6 p.m. Mr. Delaney.

**Mr. Bob Delaney:** That’s comforting to know, Chair. Ms. Wong will begin our questions.

**Ms. Soo Wong:** Thank you very much for being here. Sorry for the delay. Mr. Chair, through you to the speaker here today: In your presentation, both your written and verbal presentation to us, on the first page, in the last paragraph you alluded to, “On October 7, 2010, the Minister of Energy announced that the plant would not proceed. We eventually determined that TransCanada had spent \$40 million....” Can you share with us who is the “we”?

**Ms. JoAnne Butler:** “We” is the Ontario Power Authority.

**Ms. Soo Wong:** Okay. The OPA, right?

**Ms. JoAnne Butler:** Yes.

**Ms. Soo Wong:** Okay, and it was the OPA. You as the vice-president made that determination, or was there a committee?

**Ms. JoAnne Butler:** TransCanada had given us their costs. We had them audited by an external party, and the amount of funds, the amount of money that could not be repurposed into a new location—which could be some engineering design, permitting, legal etc.—was determined to be \$40 million.

**Ms. Soo Wong:** Okay, all right. My next question, Mr. Chair, through you to the deputant, is with regard to



the OPA determining the site. I want to ask some clarification here. Can you share with the committee, with respect to—now, it's my understanding that there was a competitive bid for RFP. Can you also share with us the role of OPA in terms of determining the site of a natural gas plant?

**Ms. JoAnne Butler:** Yes, I can. In fact, I'd like to refer you to the document that I brought. I can go through this in an organized fashion. I can make it summary points.

I think fundamentally the need was identified through our integrated power system plan. There were three areas: reliability, there was growing demand, and there was an off-coal strategy. So we needed more megawatts to bring onto the system.

When that need was identified, the government directed us, on August 18, 2008, to procure a gas-fired power plant in the southwest greater Toronto area. The Ministry of Energy also said that we shouldn't consider Lakeview Generating Station as a site.

We have a two-stage competitive process. The private developers will look at that directive, and that directive gave a geographic area in which a power plant could connect. It basically said south Oakville, south Etobicoke, south Mississauga and between the Manby and Oakville transformer stations.

The private developers went out and looked for sites in those areas. When they put their bids in, they put their bids in with a specific site. When we look at those bids, we need to know that they have site control and they have site control to the transmission system.

There are also some criteria around municipal permits etc. The bid goes in, we put it in the financial model, and the combination of graded criteria and low cost basically determines who the proponent is, who the winner of that competitive procurement is, and the site goes along with it. The private developers find the sites according to a very specific geographical and specific electrical connection.

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**Ms. Soo Wong:** Thank you for sharing the process.

My second question, Mr. Chair, through you to the deputant: Am I correct to say that the OPA drove the process of determining the site?

**Ms. JoAnne Butler:** No. We identified an area of need in the greater Toronto area for reliability, for demand in the area that was growing and for capacity for off-coal. The minister, in the directive, specified a geographic area and an electrical connection line, basically, which we put in our bid documents. The private companies went out, took those parameters and went around and looked for sites that would fit into the bid document, that would give them a chance of succeeding and moving forward in the competitive procurement.

**The Chair (Mr. Shafiq Qaadri):** Mr. Delaney.

**Mr. Bob Delaney:** Thank you for coming in. As you were involved in both gas plant relocations, is it safe to say that you were well aware of the costs of each deal?

**Ms. JoAnne Butler:** Not immediately, no. We had to work with the private companies to determine what their costs had been and what they had spent. We had to get information on that.

**Mr. Bob Delaney:** In terms of the Oakville power plant relocation, could you enlighten us a little bit on where the \$40-million sunk cost figure comes from?

**Ms. JoAnne Butler:** Yes. It comes from information from TransCanada which outlines invoices, bills etc., what it cost them to develop this project to the stage to where it was cancelled, which was basically in the trying to get approvals and planning stages.

**Mr. Bob Delaney:** Again, just for the purposes of clarification, what would be one or two examples of expenses that would be included in that \$40-million sunk cost figure?

**Ms. JoAnne Butler:** It could be legal expenses, looking at the planning, starting the environmental assessment work, public consultations, stakeholdering. They were out in the communities; it could have been going to try to have realtors—real estate land people, as they are called—going out and looking for those sites to ultimately where they got the site.

**Mr. Bob Delaney:** In the course of putting together the original set of parameters for the two plants, transmission upgrades were included. Were transmission upgrades necessary in any event?

**Ms. JoAnne Butler:** I can't speak for the first plant. It wasn't an OPA procurement. Could you ask your question again?

**Mr. Bob Delaney:** Okay. For the plant that you can speak for, transmission upgrades were part of the costs. Would transmission upgrades have been required in any event?

**Ms. JoAnne Butler:** Yes.

**Mr. Bob Delaney:** All right. So they would be separate and distinct from what we would term sunk costs. In other words, these are expenses that—one way or the other, in order to continue to reliably deliver electric power from the grid to consumers, transmission upgrades are required.

**Ms. JoAnne Butler:** It's in the long-term energy plan. It clearly says if generation is not going ahead in the southwest GTA, we need to move ahead with the transmission solution.

**Mr. Bob Delaney:** Could you talk a little bit about some of the savings that you negotiated from the lower costs of energy so that some of the other costs related to the Lennox facility would be offset by those savings?

**Ms. JoAnne Butler:** Yes. That was obviously to the benefit of the ratepayer. Ultimately, what happened was the best possible thing that happened. We put the plants on wheels, and we moved them somewhere else. The focus then was, "Okay, we still want to get a good deal for the ratepayer." The original prices were good. They were benchmarked and baselined against a competitive procurement, so we knew people had sharpened their pencils. We wanted to parlay that into a new good deal for the ratepayer. In the negotiation, because we were



taking on some of the gas demand management fees, because we were giving them an up-front cash payment on the turbines and paying for their sunk costs, we did get a lowering of what we call the net revenue requirement or the monthly payment—I think you’ve heard about that.

**Mr. Bob Delaney:** Every day on the way into Queen’s Park, I swear to God, I am stuck in traffic behind that power plant on wheels.

Could you talk a little bit about some of the savings for Oakville on the new arrangement?

**Ms. JoAnne Butler:** Yes. The original net revenue requirement for the Oakville plant was \$17,277. In the terms of the negotiation, that number was lowered to \$15,200.

**Mr. Bob Delaney:** Okay. To move on a little bit to the costs of relocating the Mississauga plant: Could you provide a little bit of explanation of where the \$190-million sunk-cost figure comes from?

**Ms. JoAnne Butler:** Yes, I can. It was a different environment in that one, because the plant was under construction. There was cement in the ground; there was iron being constructed. Quite a significant amount of material had been bought. The biggest sunk costs in that one were paying off the creditors, and the fact that there were other trade creditors who were involved in the construction of the plant—and equipment, too, that was going into the plant.

**Mr. Bob Delaney:** Okay. I just want to move quickly through a few other areas. I want to talk a little bit about the document search that you were asked to undertake. The original committee request for documents related to the two relocations: Would you categorize it as a large and involved undertaking for OPA?

**Ms. JoAnne Butler:** It’s not my area of expertise. I was involved in executive committee meetings with the rest of my peers. Yes, it was large and involved, and I believe that’s been—

**Mr. Bob Delaney:** Yes. On September 24, 2012, the OPA tabled about 27,000 pages with the Clerk in response to the committee motion for correspondence. At the time—at that time—was it your understanding that all responsive records had been produced to the Clerk?

**Ms. JoAnne Butler:** Again, you’re asking questions—I was busy trying to find a commercial deal to relocate the plant. In talks with my colleagues and my peers at the executive table, there was absolutely every effort to try and do what was asked of us.

**Mr. Bob Delaney:** Is a fortnight—two weeks—sufficient time for an undertaking of that scope?

**Ms. JoAnne Butler:** For the OPA, who is generally not in a position to be providing lots of documents like that—again, through my peers, it was a significant undertaking.

**Mr. Bob Delaney:** Is there any question about either the best efforts or the due diligence of the staff in doing their utmost to respond to the request?

**Ms. JoAnne Butler:** In my view, there is never any question about the work the OPA does—best efforts in responding to whatever we do.

**Mr. Bob Delaney:** On October 12, 2012, and February 21, 2013, the OPA tabled additional responsive records. Could you shed some light on why these additional releases occurred?

**Ms. JoAnne Butler:** Again, I was busy on other things. I believe there were other code words used. Again, I can’t categorically say.

**Mr. Bob Delaney:** That’s fine. We were just asking what you knew.

**Ms. JoAnne Butler:** Other code words, I believe, were used.

**Mr. Bob Delaney:** I think Ms. Cansfield has a few questions.

**The Chair (Mr. Shafiq Qaadri):** Ms. Cansfield?

**Mrs. Donna H. Cansfield:** Thank you very much. Part of the responsibility that we have here is to look at how we can improve things going forward. Through either the request for interest or the actual procurement process, one of the challenges is siting. We live in a province that’s a million square kilometres, and 96% of the population lives on 6% of the land mass, so we are going to have challenges around fitting energy of any description into such a concentrated population.

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In the process, do you actually look at some qualifications around the site or do you leave it up to the proponent? I’ll start with that.

**Ms. JoAnne Butler:** The siting, as I’ve said—it is the responsibility of the proponent to find a site that fits within the area we’ve asked them to fit it in. But one of the key elements of our bid documents, our proposal, is you have to meet every other environmental or planning standard that’s within the government. So if you want to move ahead with this plant, then you need to get all the planning approvals. If you want to move ahead with this plant from an environmental health and safety aspect, you need to get your environmental permits.

While we don’t specifically—we basically say, “You need to meet every law, rule and regulation that’s here that the government tells you to do, to build this plant.”

**Mrs. Donna H. Cansfield:** Then in that case, because we heard earlier from the mayor of Oakville that they certainly didn’t meet the official plan within the concept of the city of Oakville, and that they certainly weren’t going to get the permit—is the contract signed before these things are procured or is it signed after you have the assurance that they have met all of the qualifications required?

**Ms. JoAnne Butler:** The contract is signed when they’ve given us—basically, it’s a combination of our belief that they have enough financial wherewithal and abilities to be operational to build this plant, and they are the lowest cost.

**Mrs. Donna H. Cansfield:** So it really is more financial. Maybe one of the considerations going forward is that, in that process before a contract is signed, there should be some certainty that the proponent meets the requirements of, say, an official municipal plan, or that they could procure the required permits in order to pro-



ceed. Because you could meet the financial obligations, but if you can't meet the municipal obligations under the official plan, then you're in a conundrum because you've signed a contract that they may never be able to cure.

I'd be interested, and I'm sure—we need energy; we like our lights on. And there will be other situations where we need to do something, so have you thought about how we could make this process better? If we've run out of time, I can leave—

**Mr. Bob Delaney:** No, you've got four minutes.

**Mrs. Donna H. Cansfield:** I'm really interested in how we can improve the process as we move forward when we look at procurement in the future.

Also, the other issue is around public consultation—meaningful public consultation—and should that be actually written into any procurement process?

**Ms. JoAnne Butler:** I think you make some very valid points. I think siting is something that we do need to look at. There are many models around the world to develop electricity infrastructure. For example, in Mexico, where I was involved in building power plants, the government actually did go out and provide the site, and actually started the environmental approval. So when the developer came in, they had a lot less risk and therefore their price should be lower. It's all about balancing where the risk is and that price point that you want to have. Their model was, "We want the lowest price, so we want less risk built into that price, so we're going to get the site for you and we're going to start your environmental assessment."

The model we have in Ontario, which has successfully worked in the past, is that the risk of the site and finding the site is passed to the developer. The developer will decide—if siting becomes too risky for them, they're just going to price that into their price, and that's what we don't want, right? We don't want prices to go up either. So we need to find that balance of the bookends. Also, where we went laterally with the relocations of the plant was using existing government-owned land that was sited for generation. So any of those models can work.

I agree, the public consultation—we can look at other models. New York state has a model as well. So yes, there's no question that—

**Mrs. Donna H. Cansfield:** And I guess the last question is, in the case of Mississauga, the site actually was zoned commercial, industrial and electrical, so when the proponent purchased it, it was purchased under the official plan being zoned in that particular way. However, the siting on that particular parcel was suspect because it was 125 metres from the closest home. Again, does the OPA or can the OPA, in those kinds of circumstances, actually put in the contract or suggest in the discussions that you have to take these things into consideration?

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mrs. Donna H. Cansfield:** If you can't now, we can go back to this in the 10 minutes.

**Ms. JoAnne Butler:** No, I understand your point. We used the environmental permitting to determine the environmental health and safety standards that need to be

adhered to. Is there potentially something in there that the Ministry of the Environment could look at in determining those standards? Yes, but the rules in our procurements are that you need to meet what the ministry environmental standards are right now. If there's a view of potentially changing those in order to site infrastructure, then that absolutely could be looked at.

**Mrs. Donna H. Cansfield:** In the case there, they fell under, at 250 megawatts, a full assessment, because you had to be over 300. There's a good example. You're right; there have to be better processes maybe put in place. Thank you very much.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mrs. Cansfield.

To the PC side: Mr. Fedeli.

**Mr. Victor Fedeli:** Thank you very much, Ms. Butler, for being here this afternoon, or this evening, as it's coming to.

I've sent over a package of documents. On the one item called page 1 up in the top right corner, there's a December 7, 2011, email to you from Infrastructure Ontario, and the subject is "Project Vapour." What is Project Vapour, in your opinion? What does it refer to? Not the email itself but just Project Vapour, the name.

**Ms. JoAnne Butler:** My knowledge of Project Vapour is, it was a word to describe the Oakville—

*Interruption.*

**Mr. Victor Fedeli:** Thanks. I appreciate that.

**The Chair (Mr. Shafiq Qaadri):** If whoever has the cellphone could either (a) turn it off or (b) answer it.

**Ms. JoAnne Butler:** Sorry; it's me.

**The Chair (Mr. Shafiq Qaadri):** Oh, sorry.

**Mr. Victor Fedeli:** You have a good poker face. Nobody in this room knew it was you, by the way. I thought it was Yak over here.

**The Chair (Mr. Shafiq Qaadri):** Ms. Butler, just to inform you that the Chair actually has the power to confiscate that cellphone, but I'll extend the courtesy.

**Mr. Victor Fedeli:** Let's give her a break.

**The Chair (Mr. Shafiq Qaadri):** That's fine. Go ahead.

**Mr. Victor Fedeli:** I'm going to turn mine on just so he can take it.

Ms. Butler—may I call you Ms. Butler? Is that fair?

**Ms. JoAnne Butler:** You can call me JoAnne.

**Mr. Victor Fedeli:** All right, JoAnne. When was the first time you heard of the name "Project Vapour"? What do you think, approximately?

**Ms. JoAnne Butler:** It was definitely after the project was decided to not go ahead. It was, I recall, a weekly call that my CEO had with a bunch of senior civil servants. I was not a party to the—the Meeting Maker.

**Mr. Victor Fedeli:** Is this back in 2010, or are we into 2011 yet at this point? If the closure was announced October 7, 2010, would the weekly calls have started before 2011? To the best of your recollection is fine.

**Ms. JoAnne Butler:** No. I think they would have probably started in 2011.

**Mr. Victor Fedeli:** And do you know who those calls were made to, the group of people you spoke of?



**Ms. JoAnne Butler:** I was not on the invitation list.

**Mr. Victor Fedeli:** Okay. That's fair.

You had started down a path when Mr. Delaney was speaking with you where you said you knew that other code words were used. What other code words were there, and what do you know that they inferred?

**Ms. JoAnne Butler:** Mostly, the code words were used for Meeting Makers.

**Mr. Victor Fedeli:** Project Vapour-lock—we heard earlier testimony.

**Ms. JoAnne Butler:** Vapour-lock: Again, I was not part of that group. I believe it was a group of senior civil servants. My boss, Colin Andersen, had various calls on Vapour-lock.

**Mr. Victor Fedeli:** Do you know what "Vapour-lock" referred to?

**Ms. JoAnne Butler:** Yes. It referred to Greenfield South.

**Mr. Victor Fedeli:** So, Mississauga.

**Ms. JoAnne Butler:** Mississauga.

**Mr. Victor Fedeli:** The Mississauga power plant.

Project Apple: Do you know what that refers to?

**Ms. JoAnne Butler:** Well, I know that "Apple," "Banana" and "Fruit Salad" were project names that OPG used to—in the various iterations of where these plants would be located, OPG did get involved.

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**Mr. Victor Fedeli:** So, is Apple—do you know what location they were referring to? We're trying to put the pieces together, and no one has told us what "Apple" stands for. That may be a different project location? Do you know what it is?

**Ms. JoAnne Butler:** Actually, you are testing my memory here.

**Mr. Victor Fedeli:** That's okay. Do you know Banana, Project Banana?

**Ms. JoAnne Butler:** One was probably a relocation of the Oakville site and another was probably a relocation of the Mississauga site.

**Mr. Victor Fedeli:** Okay. And "Fruit Salad"? Any idea what that code word was for? I mean, that's okay. We get the idea.

**Ms. JoAnne Butler:** I think "Fruit Salad" might have been a combination or—

**Mr. Victor Fedeli:** Sounds like it, actually.

*Laughter.*

**Mr. Victor Fedeli:** No, it does. It legitimately does.

Look, who would know those—who can I ask who would definitively know that? I believe absolutely that you are not aware of what specifically "Apple" or "Banana" or "Fruit Salad" were. Who can I ask that question to eventually?

**Ms. JoAnne Butler:** Infrastructure Ontario would know.

**Mr. Victor Fedeli:** Infrastructure Ontario? Any particular person I can ask that question of, do you believe?

**Ms. JoAnne Butler:** I would ask their CEO.

**Mr. Victor Fedeli:** The CEO? Okay.

Last week—last week was it, already?—I think we had testimony from somebody, an electrical engineer named Bruce Sharp, who came up with a number, \$838 million. It's actually quite surprisingly close to some of the individual numbers you're mentioning. He, like you, said that there was a sunk cost, and I know there are documents that we have. TransCanada talked about their sunk cost at \$80 million to \$90 million, which you settled at \$40 million. They talked about \$1 billion in profit, and 8% to 9% would be reasonable—and I don't have any hesitation with that. There's \$40 million in sunk cost; everybody is happy with that.

**Mr. Peter Tabuns:** Understands it.

**Mr. Victor Fedeli:** Yes, not happy with it; happy with the answer.

Transmission solution: You had said that because the plant was cancelled, you needed transmission solution, which we all understand. Now Mr. Delaney asked you a question; I think you may have given him an answer that wasn't entirely to do with his question. He had asked, do we need a transmission solution, and your answer was, yes, of course. Then as he went on, then you clarified that the transmission solution is only because the Oakville plant was cancelled. Is that what you intended to say?

**Mr. Bob Delaney:** No.

**Mr. Victor Fedeli:** I'm not asking you, Mr. Delaney; I'm asking her. I'm asking JoAnne. She said that it's in the long-term plan, and you were satisfied with that answer. But she went on further to say that it is only because the Oakville site was cancelled. This is what I'm asking: Was transmission necessary at \$200 million or were you referring to the fact that page 34 which you spoke of, the long-term energy plan, says that because of the cancellation, a transmission solution to maintain reliable supply will be required?

I don't want to put any words in your mouth. Is that \$200 million only because the gas plant was cancelled?

**Ms. JoAnne Butler:** No. The transmission solution was pegged for 2029.

**Mr. Victor Fedeli:** I'm sorry?

**Ms. JoAnne Butler:** With the generation—first, we should say the conservation and generation solution was preferred in the timing that we had been talking about. It was also noted that ultimately, in 2029, there would be transmission still needed. What happened was, when the generation conservation solution went away, the date to have transmission in service to maintain that reliable supply was now moved up to 2018-19.

**Mr. Victor Fedeli:** Is that because the gas plant in Oakville was cancelled?

**Ms. JoAnne Butler:** Because both of them were moved, yes. When Oakville was moved, the planners got right in and said, "We need to look at the transmission solution." When Greenfield South got moved, they were right there on it and they said, "Okay. Now what? What impact is that going to be?" But ultimately, it meant bringing transmission forward by a decade.

**Mr. Victor Fedeli:** Okay. You're absolutely clear to us about that now. I understand that.

So the \$200-million transmission solution: In your opinion, would that be part of the cost to cancel the Oakville plant?

**Ms. JoAnne Butler:** No.

**Mr. Victor Fedeli:** Okay. The \$319 million to \$476 million for gas management: is that, in your opinion, part of the cost?

**Ms. JoAnne Butler:** Yes.

**Mr. Victor Fedeli:** Again, Bruce Sharp's number of \$313 million for that very same topic is awfully close to your \$319 million to \$476 million. He talks also about the net revenue requirement, the NRR. Can you talk to us a little bit about what the net revenue requirement for Greenfield South was originally? Do you know that offhand?

**Ms. JoAnne Butler:** I believe it was in the \$7,000 to \$8,000 per megawatt per month range.

**Mr. Victor Fedeli:** I would concur that it was under \$8,000 per megawatt per month. What is the contract now?

**Ms. JoAnne Butler:** It's \$12,400 per megawatt per month.

**Mr. Victor Fedeli:** So the province talks about off-setting the turbine by dropping the price from \$17,000 to \$15,000, approximately. How do we talk about \$17,000 to \$15,000 as being a saving when the other was \$8,000, now moved to \$12,400? How does that get there?

**Ms. JoAnne Butler:** Okay. The Greenfield South plant was procured in a competitive competition by the government back in 2004. At that time, costs would have been lower, labour would have been lower, and cost of financing debt and equity might have been lower. That very much impacts on the competitive pricing that we get out of these procurements. You can't really compare 2004 dollars to 2012 dollars.

**Mr. Victor Fedeli:** So when you take the difference between your \$319 million to \$476 million and Bruce Sharp's \$313 million, if you take the high end of that, that would bring the total, in Mr. Sharp's math, to around \$991 million. Regardless if it's that number or not, it seems at real odds to \$40 million. Would you say without reservation that the government knew that \$40 million was not anywhere near the total cost of cancelling the gas plant?

**Ms. JoAnne Butler:** The government knew that \$40 million were the sunk costs that couldn't be repurposed in the new site. The government was also party to and at the negotiation also signed the memorandum of understanding with TransCanada which articulated clearly the costs that were going to be required, that we were going to pay going forward—

**Mr. Victor Fedeli:** So all in, the total cost, would you say without reservation that they would know that that's more than \$40 million—the cause and effect of cancelling the Oakville gas plant?

**Ms. JoAnne Butler:** Again, they signed the memorandum; they knew that we had other costs coming: gas interconnection, electricity interconnection etc.

**Mr. Victor Fedeli:** So on page 2, I talk about—I highlight it for you on page 2—the minister announcing that transmission investments will now be required to address those needs.

I want to jump to page 3. Again, we talk a little bit on page 3, which I have highlighted, about how the costs of the turbines would also have to be included; those costs would be passed on to the ratepayer via the global adjustment.

On 3B there's a chart here that talks about the costs in the \$700-million range. Is this page 3B just for Oakville? OPA's ceiling proposal—it's almost \$700 million. Is that just Oakville?

**Ms. JoAnne Butler:** Yes, it's just Oakville.

**Mr. Victor Fedeli:** Okay, on page 3C, it says, "OPA staff advised that province would be pleased if the following or a combination of the following criteria were achieved:

"—negotiated solution does not exceed \$1.2 billion...." Is that your understanding that that came from the province of Ontario—the government of Ontario?

**Ms. JoAnne Butler:** So this was a slide deck, I believe, prepared before the decision had been made about not pursuing the project.

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**Mr. Victor Fedeli:** About what?

**Ms. JoAnne Butler:** About cancelling the project.

**Mr. Victor Fedeli:** This was made before?

**Ms. JoAnne Butler:** You know, I have actually not seen this slide deck.

**Mr. Victor Fedeli:** It is an OPA slide deck?

**Ms. JoAnne Butler:** It is. It is.

**Mr. Victor Fedeli:** Okay. Well, we may get back to that at another date.

**Ms. JoAnne Butler:** Yes.

**Mr. Victor Fedeli:** Page 3D: Preliminary estimate of the potential liability is \$600 million to \$700 million. Is that also from the OPA?

**Ms. JoAnne Butler:** Yes.

**Mr. Victor Fedeli:** Okay. We'll skip over 3F and 3G, which relate to about a million dollars in legal costs. We'll come back to that another time. We'll slip over page 4. Our NDP friends have already talked about page 5.

Let's go to page 6, then. This says it's a government-instructed counter-proposal.

**Ms. JoAnne Butler:** Right.

**Mr. Victor Fedeli:** Can you tell me a little bit about who in the government is instructing you?

**Ms. JoAnne Butler:** As I said earlier, my dealings were generally with the minister's office. This would have come through more senior levels than my level. But, yes, we were instructed to go back to TransCanada and give them a counter-offer.

**Mr. Victor Fedeli:** Okay. So who is Robert Prichard? Do you know the name?

**Ms. JoAnne Butler:** Yes, I do.

**Mr. Victor Fedeli:** And what is his role in the Mississauga?



**Ms. JoAnne Butler:** Mr. Prichard was hired by the government to be the lead negotiator in the Greenfield South—

**Mr. Victor Fedeli:** He doesn't work for OPA?

**Ms. JoAnne Butler:** No.

**Mr. Victor Fedeli:** Okay. And who is David Livingston?

**Ms. JoAnne Butler:** David Livingston is—or was, at the time—the chief executive officer of Infrastructure Ontario.

**Mr. Victor Fedeli:** And what was his role in the Oakville cancellation?

**Ms. JoAnne Butler:** Mr. Livingston came in when the deals broke down between the OPA and TransCanada early in 2011. Again, we weren't comfortable that we were getting the right data. TransCanada had put in a proceeding against the crown; there was a litigation concern. The government brought in Mr. Livingston to take over more or less, be the lead in the negotiations with TransCanada and move forward on the settlement.

**Mr. Victor Fedeli:** And who did Robert Prichard report to? Do you know? He wasn't part of the OPA. He was hired externally?

**Ms. JoAnne Butler:** He was hired externally by the government.

**Mr. Victor Fedeli:** By the government, at their direction?

**Ms. JoAnne Butler:** Yes.

**Mr. Victor Fedeli:** So on page 8, there's an email here that says: "JoAnne Butler is on a call with Premier's office now." This would be April 14, 2011. This is from Halyna Perun. She says: "JoAnne Butler is on a call with Premier's office now."

Were you in frequent communication with the Premier's office, or can you tell us a little bit about this particular call from back in 2011?

**Ms. JoAnne Butler:** The only person I remember dealing with from the Premier's office was Sean Mullin, so Sean must have been on this call.

**Mr. Victor Fedeli:** The last name?

**Ms. JoAnne Butler:** Mullin.

**Mr. Victor Fedeli:** And who is Sean Mullin?

**Ms. JoAnne Butler:** He was in the Premier's office, I believe, on the energy file.

**Mr. Victor Fedeli:** So the Premier's office was interested in these files back in 2011. Can you tell us anything, any details, about your instructions from the Premier's office?

**Ms. JoAnne Butler:** The instructions basically were—the commitments that the government had made with TransCanada, prior to letting the OPA know, were basically outlined in a letter that the OPA wrote to TransCanada, because we held the contract, which basically said, "We're going to work together to come up with a new proposal, and that you would get the financial value of your contract."

**Mr. Victor Fedeli:** Okay. So was it a frequent-type arrangement where the Premier's office communicated

with you or you communicated with the Premier's office about TransCanada?

**Ms. JoAnne Butler:** It wasn't that frequent. We did have some meetings after the project was cancelled, in efforts to move forward and try and get to an appropriate solution. By basically April, the negotiations had more or less broken down between TransCanada and the OPA, so that was probably my last conversation.

**Mr. Victor Fedeli:** Okay. The energy minister—the current energy minister—talks about OPA driving the bus, and others here have talked about the energy ministry driving the bus or the government driving the bus. Who do you think ran the show here with respect to the cancellation?

**Ms. JoAnne Butler:** My dealings were generally with the minister's office. On the TransCanada file I did get to know Sean Mullin, and I knew he was from the Premier's office, but I could not comment on the ultimate decision-makers.

**Mr. Victor Fedeli:** There are other documents that we'll get to a little later that talk about—

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Victor Fedeli:** Oh, thank you—that talk about, "The government told us to do this," or the \$712-million settlement that was offered. Who would have directed that?

**Ms. JoAnne Butler:** It would have come through senior levels of the OPA. It would have been from the minister's office, probably, or generally we deal with the deputy minister or the minister's office. It would have come through more senior people in the OPA.

**Mr. Victor Fedeli:** So are you referring to the minister—which minister are you referring to, actually? Which energy minister are you referring to?

**Ms. JoAnne Butler:** At the time of the Oakville cancellation, it was Minister Duguid.

**Mr. Victor Fedeli:** Okay. The government-instructed counter-proposal that I spoke of: Again, do you have any names that you can attach to who from the government instructed the counter-proposal?

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli. To Mr. Tabuns with the NDP.

**Mr. Peter Tabuns:** Yes. Do you have any names, following on that question?

**Ms. JoAnne Butler:** I'm sorry?

**Mr. Peter Tabuns:** Do you have the names of government officials who were driving the counter-proposal, other than Sean Mullin?

**Ms. JoAnne Butler:** The other person I dealt with was Craig MacLennan.

**Mr. Peter Tabuns:** Okay. Fine. I just wanted to let the Chair know that I've asked Ms. Butler a number of questions from emails. I have these packaged, and I'll turn them over for the committee's use in a future review of this line of questioning.

A memorandum from Deborah Langelaan—my best guess—a few notes: "OPA met with Auditor General on January 17, 2011, and provided responses to the following questions: reason for signing the contract; reason for

cancelling the contract; when did the OPA and ministry decide the Oakville plant is no longer needed; and has it been determined what the penalty will be for terminating the contract.”

What was the reason that you understood for the cancellation of the contract?

**Ms. JoAnne Butler:** The government decided that they didn’t want the project to go ahead.

**Mr. Peter Tabuns:** I’ve heard arguments made that it was cancelled because they concluded that air quality problems were substantial. Was that something that was presented to you as a reason for cancellation?

**Ms. JoAnne Butler:** I think the government has been very clear recently why they cancelled the projects.

**Mr. Peter Tabuns:** Do you know why they didn’t want it to go ahead?

**Ms. JoAnne Butler:** You would have to get full clarity from them as to their reasons.

**Mr. Peter Tabuns:** Can you tell us: Do you know what answer was given to the Auditor General about why this contract was cancelled?

**Ms. JoAnne Butler:** After the project was cancelled, we did come out and say that the need in the southwest GTA—while it was still there, the timing of that need had changed. We also said, “But we’re going to have to bring transmission.” The timing of the need had changed, was one of the reasons for moving the plant. Having said that, we needed to bring in a transmission solution.

**Mr. Peter Tabuns:** Was that a reason that you gave or that was given to you?

**Ms. JoAnne Butler:** The planners reassessed the planning environment in that area and said, “The need is still there; we’re going to have that need, but the timing of the need has changed because of the economic downturn in 2008.” We made that very clear in any disclosures we’d had on the topic.

**Mr. Peter Tabuns:** In an email dated April 14—oh, sorry, it has been asked.

In your opinion, if there was a downturn in the economy and the power was no longer needed, why would we relocate a plant to produce power that was no longer necessary?

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**Ms. JoAnne Butler:** Well, that’s a short-term view of a sector that needs a long-term view.

**Mr. Peter Tabuns:** Okay.

**Ms. JoAnne Butler:** We do need that capacity. We are moving off coal. Yes, economic situations change, and we need to be flexible enough to look at our plan and make sure we make the required changes in those plans, but ultimately, with the off-coal, and with the view that economies will turn up again, we do need those megawatts.

**Mr. Peter Tabuns:** So in fact you saw the plant as being necessary for the system, and you saw it probably as best located where it was proposed?

**Ms. JoAnne Butler:** Absolutely. It was put in the optimal location to solve a bunch of requirements: demand, off-coal and reliability.

**Mr. Peter Tabuns:** One of the approaches to this whole matter was to offer other locations to TransCanada Enterprises, and one of those was a plant in Kitchener-Waterloo-Cambridge.

**Ms. JoAnne Butler:** Right.

**Mr. Peter Tabuns:** Was a plant needed at that location?

**Ms. JoAnne Butler:** Actually, that is one of the high-growth areas, and a peaking plant, a smaller plant, was required, and it was noted in the plan as a requirement of that area.

**Mr. Peter Tabuns:** And is that still in the works to go forward?

**Ms. JoAnne Butler:** I’d have to confirm it with the planners, but I think we’re looking at a more regional planning approach, and I think we have some transmission fixes for that area right now.

**Mr. Peter Tabuns:** All right. Eastern Power, Mississauga: My understanding was the contract was signed in 2005; it could have been 2004, as you noted. They had huge difficulty getting financing. Does your unit—do you have any information as to why they had difficulty getting financing?

**Ms. JoAnne Butler:** No. Again, when we ask the private sector to develop these plans, the risk of the site, their financing, getting all the permits is their risk, and so they have to do what they need to do to get financing. And I do know that one of the biggest costs of developing a power plant is the cost of financing.

**Mr. Peter Tabuns:** And so this particular project had financing that was very costly to wind up when the contract was cancelled. Can you tell us about that?

**Ms. JoAnne Butler:** Actually, we’re not privy to any of those documents, any financing arrangements. Again, our job is to define the need. Our preference is competitive procurements. We make sure that the people involved in those procurements, certainly our latter ones, have the technical capability, the operational and financial worth to be in those procurements, and we bring a low-cost option.

We are the—we call it counterparty, but we are the other signatory to the contract in a 20-year power purchase agreement, and with that 20-year power purchase agreement, the private developer can go and look for the financing he needs to build his project.

**Mr. Peter Tabuns:** There was some indication in the emails that we reviewed that at one point there was consideration to try and shut down the Mississauga plant before construction started. Were you part of those discussions?

**Ms. JoAnne Butler:** No, I was not.

**Mr. Peter Tabuns:** Ah—

**Ms. JoAnne Butler:** No. Let me—over the time from when I started at the Ontario Power Authority, there were often questions coming over from the government—what sort of status, chronologies etc., but, no, I was not privy to any discussion that was leaning towards stopping the project.



**Mr. Peter Tabuns:** And did you have any indication in the summer of 2011 that this project was going to be cancelled?

**Ms. JoAnne Butler:** No.

**Mr. Peter Tabuns:** Were your planners or your staff at the OPA putting forward the idea that it should be cancelled?

**Ms. JoAnne Butler:** You're talking the summer of 2011?

**Mr. Peter Tabuns:** Yes.

**Ms. JoAnne Butler:** There might have been questions asked of the planning group, "Do we still need this plant?" etc. Our view was, it was competitively priced power, and there still was a need out there in Mississauga.

**Mr. Peter Tabuns:** Just following on a question Mr. Fedeli asked earlier, when this plant started under construction, it was \$7,000 per megawatt per month. With the cancellation and relocation, that adds about \$5,000 per megawatt per month to this plant's cost, does it not?

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Ms. JoAnne Butler:** You're missing a step in there, which I take full accountability for. We did amend and restate the contract in 2009 because the proponent had had a lot of difficulties with his environmental assessment and had been bumped up for many, many years, but what we wanted was to get the diesel component out of that power plant. So we did a negotiation where, "You take the diesel's proportion out. We don't need it. It's another environmental consideration that's not appropriate. Here's the deal that you get." So it was two-step process. When it was actually being constructed, the actual net monthly payment was \$12,900 per megawatt.

**Mr. Peter Tabuns:** Okay. Thank you. Thank you for your assistance today.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns.

To the government side: Mr. Delaney. Ten minutes.

**Mr. Bob Delaney:** Thank you, Chair. JoAnne, I'd just like to go through about a dozen things, most of which are clarification in nature, so they should be pretty quick.

Code names: You've dealt with organizations that have traditionally used code names in the past?

**Ms. JoAnne Butler:** No, I haven't.

**Mr. Bob Delaney:** Have you ever used code names at OPA yourself?

**Ms. JoAnne Butler:** No, I don't recall I have.

**Mr. Bob Delaney:** Okay. During the contractual organizations that the OPA was involved, did you actually oversee the contract management team at OPA?

**Ms. JoAnne Butler:** Yes, I am in charge of the contract management team at the OPA.

**Mr. Bob Delaney:** Okay. So that included the managing of the relocations of both the Oakville and Mississauga gas plants and conducting the negotiations with TransCanada Energy and Eastern Power?

**Ms. JoAnne Butler:** We were a party at the table, along with the government, yes.

**Mr. Bob Delaney:** How long did it take?

**Ms. JoAnne Butler:** Which one?

**Mr. Bob Delaney:** Answer the question for each one of them. The TransCanada Energy one: How long did that one take?

**Ms. JoAnne Butler:** We heard that the project was not going forward on October 7, 2010, and we actually signed the memorandum of understanding on September 24, 2012, and we actually, in that memorandum of understanding, agreed to hash out the terms going forward and commit to a contract by December 14, 2012, which we did.

**Mr. Bob Delaney:** Okay. And the Mississauga one?

**Ms. JoAnne Butler:** The Mississauga one: Construction stopped in the fall of 2011 and the contract was amended and restated at the beginning of July 2012.

**Mr. Bob Delaney:** Okay. Would it be reasonable to characterize the contract negotiations as complex?

**Ms. JoAnne Butler:** That would be very reasonable.

**Mr. Bob Delaney:** I'm sure. And if I were to use the word "sensitive," would that also be a reasonable description?

**Ms. JoAnne Butler:** I would say "complex and multi-party" would be my description of them.

**Mr. Bob Delaney:** Would it be reasonable to say that the negotiations would be commercially sensitive?

**Ms. JoAnne Butler:** We are very mindful of our duties, as contract managers, of the commercial sensitivity of our contracts.

**Mr. Bob Delaney:** Would there have been any significant risk to your negotiations if commercially sensitive details were made public before the deals were finalized?

**Ms. JoAnne Butler:** Yes, there would be. We believe there would be.

**Mr. Bob Delaney:** What kind of risks and what would the potential consequences be for both taxpayers and ratepayers?

**Ms. JoAnne Butler:** At the end of the day, it's all about a negotiation. If you're put in a position of weakness or if someone knows what your bargaining position is or where you're headed etc., it starts you off in a position of weakness. So in any negotiation, you need to at least start off on the same level playing field.

**Mr. Bob Delaney:** Okay. Just to try to draw a comparison: In 2002, the then Minister of Energy, Jim Wilson, in regard to confidential information on a lease agreement between OPG, Ontario Power Generation, and British Energy, acknowledged at that time that disclosure of financial and commercial information from Ontario Power—and I'll use his words—"may prejudice significantly the competitive position of the corporation or result in undue loss of gain to parties other than the corporation." Would that sort of encapsulate some of the issues that you were involved in at the time period of 2011?

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**Ms. JoAnne Butler:** I would agree that, yes, we wanted to make sure we had an equitable negotiating position.

**Mr. Bob Delaney:** Good. I think Mr. Flynn has a few questions. I thank you for your time.

**The Chair (Mr. Shafiq Qaadri):** Mr. Flynn.

**Mr. Kevin Daniel Flynn:** Thank you, JoAnne, for being here today. As you know—I wouldn't be telling you anything you don't know—the decision to locate the plant in Oakville was viewed quite negatively by my community when the announcement was made.

When the OPA came to the decision to locate the plant in Oakville, it claimed it came to that decision as a result of a competitive process, that it had been through an RFQ, an RFP process, and in order to ensure that everybody got treated fairly in the process, that a scoring system was used. There were criteria that needed to be met, and if you met those criteria you got scored appropriately. I wonder if you could just expand on sort of how that process works, because what's been left out of the conversation so far, I think, is that the Oakville site was one of four—

**Ms. JoAnne Butler:** That's right.

**Mr. Kevin Daniel Flynn:** —that were actually in the competition. Neither one of them, in my opinion, was a good site, but certainly in my own community it was felt that the Oakville site was the one that, if it was scored appropriately, would have ranked number 4 as opposed to number 1. So perhaps you can expand on the process and the criteria that are used.

**Ms. JoAnne Butler:** Sure. Again, back to the siting, we were directed by the government to site a plant in south Oakville, south Mississauga or south Etobicoke, along a certain electrical interconnection. We wrote that into our bid documents, which the private developers took and went out and started looking for sites that they thought would be appropriate for the connection and this bid.

One of the—I guess sort of mandatory—criteria in order even to get in the game was that you had to have site control and you had to have control of the private lands that would let you connect into the bulk electricity system. So when the documents came in, we made sure that that was a mandatory thing; they had to have that. Then—you're right—it did go into a relative ranking that was scored on—I can get you exactly what they are; and they might actually be in that sheet—how far along they were in the environmental approvals; how far they were along in the planning approvals; had they ordered their equipment; had they done stakeholder engagement? All those things. And they were all ranked. That spit out a score and that score was put beside a financial model, and it's the combination of that ranking and the price that the lowest cost would fall out. You could have a very—not the highest score in terms of those rated criteria but you could have a low price, and the combination of the two still was the lowest price, and therefore the bid was still won.

**Mr. Kevin Daniel Flynn:** I'm thinking back to the mayor's comments—the mayor of Oakville was here this morning, before you. I'm thinking back to his comments. It's possible that a project that did not have its municipal approvals could win this competition.

**Ms. JoAnne Butler:** Actually, at the stage of the game to when the proposals are submitted to be analyzed and determine who the winner was, it's quite common that they're not very advanced in those stages. It takes time—

**Mr. Kevin Daniel Flynn:** So it wouldn't score highly.

**Ms. JoAnne Butler:** It wouldn't score high, potentially, on the municipal planning side, but it might win because it had a lower price.

**Mr. Kevin Daniel Flynn:** Well, the ordinary people in my community, when they look at this process and they try to understand it, would see a project that had very little, if any, municipal approval, and would therefore conclude that there must have been a fairly high price differential in order to compensate for that. Do you recall the price differential or the cost differential between the first and the second plants?

**Ms. JoAnne Butler:** I don't know. I do know, though, that it was very, very competitive.

**Mr. Kevin Daniel Flynn:** Very competitive in the sense that all the projects were close to each other, or this one was clearly the winner?

**Ms. JoAnne Butler:** You're taxing my memory. I'll get you the details if you want, but I do believe the first three were fairly close, and there might have been one that might not have been. Again, it has been a while, but I can get that for you.

**Mr. Kevin Daniel Flynn:** It has been too long. One final question: The costs you talk about, beyond the sunk cost—I'm talking about turbines and the gas management—the impact of that, the reason for that negotiation, was to effect savings to offset the other costs. Is that right?

**Ms. JoAnne Butler:** Right.

**Mr. Kevin Daniel Flynn:** Is it fair to say that?

**Ms. JoAnne Butler:** I think it's fair to say that what we did, which was take a similar plant with a similar configuration and move it to another site and hash out the lowering of the monthly payment—in contrast with some of the other costs that we did say we were going to do—was absolutely the best solution.

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Ms. JoAnne Butler:** In our minds, we did still get competitive pricing at that location.

**Mr. Kevin Daniel Flynn:** Fine, thank you. That's all I have, Mr. Chair.

**The Chair (Mr. Shafiq Qaadri):** Ms. Cansfield.

**Mrs. Donna H. Cansfield:** I have a very quick question. In fairness to the OPA, you inherited the Mississauga contract, because it was negotiated through the ministry earlier. But having said that, it was done in whatever it was—2003, 2004 or 2002; I can't remember. It's now 2011. That's a lot of years for a contract to drag out. At some point, you have to look at the whole issue of “fish or cut bait,” right? How long does this go on before you say, “We re-evaluate. We don't need as much electricity. We don't need this contract. We need to deal with the fact that they can't procure the financing.”



Maybe that's a discussion for another day, but something we need to look at is how we draw up those contracts.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Ms. Cansfield.

To the PC side: Mr. Leone, 10 minutes.

**Mr. Rob Leone:** Thank you, JoAnne. On page 6—Mr. Fedeli referred to documents that we've provided to you as a slide deck from the Ontario Power Authority. In that slide deck, three times, it says: "The OPA was instructed by the government"; "the government-instructed counter-proposal"; "the government-instructed counter-proposal." It seems like the OPA is trying to put the blame on the government for the decisions that have been made—

**Mr. Victor Fedeli:** The other way around.

**Mr. Rob Leone:** Right, the other way around; sorry. The government is, vice versa, trying to throw the OPA under the bus. Do you feel that the government is throwing the Ontario Power Authority under the bus for the decision that the government has made to reposition these plants and relocate them?

**Ms. JoAnne Butler:** No, I don't. The government made a decision. The government has explained why they made that decision. It was our job to take that decision and move it into good, commercial, reasonable electricity-generation projects—both of them—and I believe we've done that.

There's no question, there was some back and forth in the early days. I don't mind being told what to do. The government can tell me what to do any time they want. What we were reacting to were some of the decisions they made on how we were going to do it. We had the expertise to do it. We continue to have the expertise to do it.

There's no "under the bus." They have a job, we have a job, and we're doing that job.

**Mr. Rob Leone:** But the government is sticking to its \$40-million number because they suggest that's the number that you've given them. Is that the number that you've given the government?

**Ms. JoAnne Butler:** Again, we have been very clear with the government: The sunk costs are \$40 million. The government was at the table when we negotiated the deal. They had signed the memorandum of understanding. They understand schedule A and schedule B, which outline the costs that we will be picking up going forward. When the engineering gets done, when the site and the orientation of the equipment get done, we can fine-tune those prices.

I can't comment on how they choose to communicate the numbers.

**Mr. Rob Leone:** All right. In testimony today, you suggested that the OPA made every effort to comply with what the committee was asking. Now, you said that kind of—I took that as a point of interest, because I kind of tried to read between the lines of whether you think or feel that there was any political interference with your

ability to comply with what the committee was asking. Do you think there was any political interference from the government, telling the OPA how to comply with the order of the Legislature?

**Ms. JoAnne Butler:** Is that around the document disclosure?

1830

**Mr. Rob Leone:** It's around document disclosure.

**Ms. JoAnne Butler:** Again, that wasn't my responsibility, and I really kept out of it. When they asked me for my documents, I gave my documents, my emails—painfully, I gave my emails. I can't comment on that.

**Mr. Rob Leone:** We have a document from the Ontario Power Authority, and it was released in a memo that was actually leaked to us, and in that memo it suggested that the ministry staff now say that they do not—I'm quoting here. This is from Kristin Jenkins. Who's Kristin Jenkins, by the way?

**Ms. JoAnne Butler:** Kristin is our VP of communications at the Ontario Power Authority.

**Mr. Rob Leone:** She's the VP of communications. And do you know who Ziyaad Mia and Mike Lyle are?

**Ms. JoAnne Butler:** Ziyaad works in our legal group. He's a lawyer, and Mike Lyle is our chief legal counsel—VP of legal.

**Mr. Rob Leone:** Okay. This email was dated October 3, 2012. It was addressed to Colin Andersen. I'm going to quote a couple of lines from there. It says, "Ministry staff now say that they did not instruct OPA staff to exclude attachments to correspondence where the correspondence does not mention Oakville or Mississauga."

Then it goes on to suggest that, "As you are aware, both Ziyaad"—is that how you say the name?—"and I have been clear that this is in fact what Jesse Kulendran told us to do at the meeting on Aug. 22."

Can you explain what this memo is referring to, or do you have any knowledge?

**Ms. JoAnne Butler:** I do not have knowledge of that memo.

**Mr. Rob Leone:** Do you know who Jesse Kulendran is?

**Ms. JoAnne Butler:** I believe Jesse works in the ministry.

**Mr. Rob Leone:** In the ministry. And do you know what role she would have had in the disclosure of documents?

**Ms. JoAnne Butler:** No, I do not.

**Mr. Rob Leone:** All right. The questions that emerge from this document for us—it just appears that the Ontario Power Authority, which is supposedly an independent entity, was being instructed by officials in the Liberal government. Do you think that that in effect did happen, in your view?

**Ms. JoAnne Butler:** I don't know. Certainly I was not party or privy to any of that type of conversation.

**Mr. Rob Leone:** All right. In the days leading up to the 2011 general election, where you read media stories leading up to that that the Liberal Party, who was the government, was backing out of the contract that it

signed in the Mississauga gas plant scenario, you described that as “frightful.” That was part of something that we’ve talked about already. Do you view that that decision was reckless, in your mind?

**Ms. JoAnne Butler:** Again, the government needs to make the decisions that governments make. From a contract point of view, a contractual point of view or a commercial point of view, there was no reason to end that contract.

**Mr. Rob Leone:** All right. You also stated in your testimony today that you haven’t personally had anything to do with your own documents. You didn’t redact any of those documents.

**Ms. JoAnne Butler:** No.

**Mr. Rob Leone:** Did you feel at any time that those documents that you did provide should have been redacted in any way?

**Ms. JoAnne Butler:** No. Other than my visceral comments and gut reactions, no. We were just doing our job.

**Mr. Rob Leone:** All right. We have documented correspondence from April 14, 2011, where Halyna Perun from the legal services branch of the Ministries of Energy and Infrastructure sent an email to Michael Lyle that states, “JoAnne Butler is on a call with Premier’s office now.” I believe I have that document—

**Ms. JoAnne Butler:** Yes, it’s here. You had it here.

**Mr. Rob Leone:** Do you have that?

**Ms. JoAnne Butler:** Yes.

**Mr. Rob Leone:** What was that call about? Do you recall?

**Ms. JoAnne Butler:** I’m not going to say categorically what the call was about, but I do believe it was again trying to come to a resolution on moving the discussion forward in terms of finding a new site for the Oakville generating station.

**Mr. Rob Leone:** And who in the Premier’s office were you speaking to?

**Ms. JoAnne Butler:** Again, the only person that I met from the Premier’s office involved in the Oakville generating station was Sean Mullin.

**Mr. Rob Leone:** So it’s still Sean Mullin. And did he provide you with any directives on how to behave or act?

**Ms. JoAnne Butler:** No.

**Mr. Rob Leone:** Do you know if anyone else was on the call?

**Ms. JoAnne Butler:** I can’t remember that far back.

**Mr. Rob Leone:** Did you take any notes from the call?

**Ms. JoAnne Butler:** I can check.

**Mr. Rob Leone:** All right. Do you have any more questions, Vic?

**Mr. Victor Fedeli:** Is there time?

**The Chair (Mr. Shafiq Qaadri):** One and a half minutes.

**Mr. Victor Fedeli:** There are a couple of questions I didn’t get to in the first 10 minutes. It’s about legal fees and whether they were included in the cost. There is a mention from Michael Killeavy at OPA. You’re familiar with him?

**Ms. JoAnne Butler:** Yes.

**Mr. Victor Fedeli:** Okay. He says, “As we discussed last week, the OPA would like to retain Osler to advise us on the Greenfield South matter. You indicated that Osler was prepared to do so with the same team that’s working on the TCE matter and applying the same billing rates as the TCE matter.” That’s 3F, and 3G that I provided shows a contract—actually it’s called a “non-competitive (justification) explanatory memo” that says the estimated cost would be \$500,000. So this is a sole-sourced contract for \$500,000 to cover the Greenfield matter, and it suggests that it would be the same fee for doing the TransCanada. Would you confirm, then, that there would be roughly \$1 million spent in this period of time on those two exterior contracts? And are they included in the cost of cancelling the power plants?

**Ms. JoAnne Butler:** I can’t confirm the numbers for you but, yes, the legal fees were included in the costs.

**Mr. Victor Fedeli:** I’m sorry?

**Ms. JoAnne Butler:** I can’t confirm the number. I don’t know whether it’s a straight two times, but, yes, the legal costs have been included in the cost.

**Mr. Victor Fedeli:** Are they in the sunk cost for \$40 million?

**The Chair (Mr. Shafiq Qaadri):** I need to intervene there. At the outset I would just simply thank members of the committee for your patience and endurance. On our collective behalf, I’d like to thank you, Ms. Butler, for appearing before us on behalf of OPA, and I would suggest that you return that phone call.

The committee is now adjourned until Thursday, March 21, 8:30 a.m.

*The committee adjourned at 1837.*











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Second Session, 40<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 40<sup>e</sup> législature

# Official Report of Debates (Hansard)

Thursday 21 March 2013

# Journal des débats (Hansard)

Jeudi 21 mars 2013

## Standing Committee on Justice Policy

Members' privileges

## Comité permanent de la justice

Privilèges des députés



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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE POLICY

Thursday 21 March 2013

COMITÉ PERMANENT  
DE LA JUSTICE

Jeudi 21 mars 2013

*The committee met at 0833 in room 151.*

## MEMBERS' PRIVILEGES

**The Chair (Mr. Shafiq Qaadri):** Chers collègues, bonjour et bienvenue. J'appelle à l'ordre cette séance du Comité permanent de la justice.

The Chair was challenged yesterday that he wouldn't be able to start the meeting in Italian, so *[remarks in Italian]*.

**Mr. Victor Fedeli:** Bravo.

**The Chair (Mr. Shafiq Qaadri):** Grazie, signore.

With that, to begin with before we invite our first presenter—the honourable Her Worship Mayor McCallion of Mississauga—we have a clarification to issue, as perhaps governments do on occasion, with regard to a motion that was presented. I clarify for the committee that Mr. Fedeli's motion at our last meeting was withdrawn prior to any assessment of its orderliness, and I would like Mr. Fedeli to please comment.

**Mr. Victor Fedeli:** Thank you.

**The Chair (Mr. Shafiq Qaadri):** Are we done? There we go. That was benign.

## CITY OF MISSISSAUGA

**The Chair (Mr. Shafiq Qaadri):** Mayor McCallion, please come forward. It's a privilege and honour to have you here. Thank you very much for your time. We welcome your entourage.

You know the drill, I'm sure, better than the combined knowledge of many of the people in this room. You have five minutes, as you know, to make your opening statements, and then rotating times. I would respectfully ask you to please begin now.

*Interjection.*

**The Chair (Mr. Shafiq Qaadri):** Oh, I'm sorry. You need to be sworn in.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Do you solemnly swear that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

**Ms. Hazel McCallion:** So help me.

**The Chair (Mr. Shafiq Qaadri):** Thank you. Mayor McCallion, please begin.

**Ms. Hazel McCallion:** Okay. Thank you for giving me the opportunity to be here, because the very item that

has been greatly debated at Queen's Park happens to be located in the city of Mississauga.

In 2004 the OPA, at the request of the province to go out to seek proposals for a gas plant, announced that they had chosen the Loreland site in Mississauga for a gas plant: absolutely no communication or consultation with the city—it landed right in the midst of a residential area, next to a creek that has some conservation authority responsibilities and concern, next to a hospital—absolutely none. They didn't do their homework in any shape or form. Their arrogance was obvious.

Needless to say, the mayor was on the phone immediately. I don't know who the chairman was at the time; I don't think he will ever forget the discussion he had with the mayor, because we do our homework in the city of Mississauga when we want to approve development of any sort.

Therefore, this started in 2004. Opposition second to none—citizens, city, hospital, you name it. Unfortunately, it didn't proceed because, as I understand it—and it was quite evident—it didn't have the financial resources to put the plant in. So it went from 2004 until finally, we put it through the process. We had to, which is an obligation on our part. We tried everything to try to prevent it from occurring because it was contrary to our official plan, contrary to our zoning—contrary to everything, quite honestly. So it was an uphill battle. Finally, they obviously found the finances to do it, and then we had to proceed.

It was an OMB hearing, by the way, as a result of the opposition of the staff and the citizens of Mississauga etc. In spite of all the opposition, justified reasons for it not to be there, the OPA did not in any way recognize the concerns of the city or the citizens. They plowed ahead and allowed them to proceed. Needless to say, the city of Mississauga has a very special principle, and that is, if they meet all the conditions, a permit must be issued. We follow that consistently. We don't try to politicize the building process in any way; it's strictly if they meet all the conditions of the OMB hearing that was in their favour etc., then we issue the permit. So the permit was issued on the plant.

I had worked with the energy minister, who was Dwight Duncan at the time, trying to find a just cause for cancelling the very unfortunate decision made by a special purpose body. And I want to say to all parties assembled here, you better watch carefully all special purpose bodies that you set up—not only control them,

but also control their expense accounts as well. They are completely, many of them, out of control, and in my opinion the OPA was out of control. They wouldn't listen to anything. In fact, this plant was approved by them, and then they decided to put another plant in Mississauga at Winston Churchill, dealing with St. Lawrence Cement. Obviously, the OPA had decided that Mississauga should endure a number of gas generation plants.

It's very interesting that Sithe applied to the city to build a plant in the right location—in the right location—nowhere near residential, nowhere near a hospital, and it got complete approval by the city and by the citizens, the citizens of Mississauga. It never went ahead because they could not enter into an agreement with the OPA to get authority to proceed. I just want to prove to you that the citizens of Mississauga don't "not in my backyard"—they were prepared, both the staff and the city, the council of the city and the citizens of the area, to accept the gas plant in the right location, that it doesn't interfere with residential, environmental concerns—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mayor McCallion. With trepidation, I interrupt you, but now pass the floor to the government side, to Signor Del Duca.

**Mr. Steven Del Duca:** Thank you very much, Mr. Chair. Thank you also for beginning this meeting trilingually for all of us, especially because you speak better Italian than I do.

0840

Good morning, Mayor McCallion. It's a pleasure to see you. Thank you for joining us here today and for taking time from your schedule to be with us.

You mentioned in your opening that there was a fair bit of opposition in your municipality to this particular power plant. In terms of the residents themselves, can you give us a sense of what percentage of the community was upset? How many residents? Was it overwhelming? How many people, would you say, as a percentage, were opposed to this particular power plant?

**Ms. Hazel McCallion:** This represents a large residential area in Mississauga. It's an older area of the city, well established etc. They strongly opposed it. It's a large representation of the citizens in the area.

**Mr. Steven Del Duca:** So given their opposition and given the experience that you had, do you think it's fair to say that the Ontario government made the right decision when it decided to relocate the power plant?

**Ms. Hazel McCallion:** Say that again?

**Mr. Steven Del Duca:** Do you believe the government of Ontario made the right decision, the correct decision, in relocating the power plant?

**Ms. Hazel McCallion:** You're asking me whether it was the right decision? No, bad decision.

**Mr. Steven Del Duca:** To relocate? No, to relocate the power plant.

*Interjection.*

**Ms. Hazel McCallion:** Oh, was it the wrong thing to cancel it?

**Mr. Steven Del Duca:** Was it the correct decision to cancel it, to relocate the power plant?

**Ms. Hazel McCallion:** Yes, but it should have been cancelled before a permit was issued to build it. That's when it should have been cancelled. Obviously, if you're going to cancel a contract, you'd better be prepared to pick up a pretty heavy cost of cancelling a contract. Think of the costs if it had been cancelled before the permit was issued. Now you're faced with the building half up, with all the equipment ordered, you name it. The decision should have been made earlier. It should have been made before the permit was issued, in my opinion.

**Mr. Steven Del Duca:** So the people of your community, were they happy with the decision, once the decision was made to relocate?

**Ms. Hazel McCallion:** Well, the citizens were happy with the cancellation of the plant, but I can assure you they would have much preferred that it was cancelled before the permit was issued. My citizens are not interested in wasting taxpayers' money.

**Mr. Steven Del Duca:** I'd like to move on for a second to promises made by all three political parties during the 2011 general election. Earlier this week, on Tuesday, the mayor of Oakville, Rob Burton, was here with us. He told the committee that he "won promises from all parties to stop the proposed power plant." He emphasized that he felt supported by all three parties. When it comes to the Mississauga power plant, I'd like to ask, did you receive similar commitments or promises from all three political parties regarding the power plant?

**Ms. Hazel McCallion:** I never discussed it with all political parties; I discussed it with the Premier of the province from day one, advising him that approval of that contract should be cancelled. I didn't talk to the Conservatives or the NDP. The impression that was certainly given beyond a doubt—and, in fact, I want to tell you I think all parties would have cancelled it; there's no question about it.

It was a bad decision by the Ontario Power Authority—a very bad decision. In fact, when we opposed the implementation of another plant at St. Lawrence Cement, we proved to the province, when we came down to a press conference, that the projected requirements for hydro by the OPA were flawed, overestimated in a major way. We showed the province a chart that clearly indicated that the OPA requests were flawed.

Quite honestly, I don't think we've had any blackouts since all those plants have been cancelled. Interesting. I think it proves beyond a doubt that the OPA didn't do their homework on the projected hydro needs of the GTA.

**The Chair (Mr. Shafiq Qaadri):** Mr. Delaney.

**Mr. Bob Delaney:** Thank you, Chair, and welcome, Madam Mayor. I just want to ask a couple of questions of clarification here. You mentioned your discussions on the power plant issue. Did you have any discussions with any members of the Conservative campaign or the party leader's office for the Conservative Party?



**Ms. Hazel McCallion:** No. I had no feedback. I never discussed it with them.

**Mr. Bob Delaney:** Did they attempt to contact you or any of the city staff in any way, regarding the power plant?

**Ms. Hazel McCallion:** No.

**Mr. Bob Delaney:** Did you have any discussions with Andrea Horwath or any members of the NDP campaign or the NDP in that time period?

**Ms. Hazel McCallion:** Sorry, I have a hearing aid, and your voice is all—very bad.

**Mr. Bob Delaney:** I'm trying to do two things: One is to talk into the microphone for Hansard and the other is making sure that you can hear me.

Did you have any contact with the New Democratic Party or Andrea Horwath or any member of their campaign team at that time in 2011?

**Ms. Hazel McCallion:** No, I don't recall having any discussion.

**Mr. Bob Delaney:** Did the NDP or their campaign team or anybody from the party try to contact the city or the staff?

**Ms. Hazel McCallion:** No. In fact, I would say that the citizens were in touch with both the Conservatives and with the NDP, no question about it. They not only appealed to the Premier and to the present government; they definitely appealed to the Conservatives and the NDP. There's no question about it. I mean, the citizens were very, very strong.

**Mr. Bob Delaney:** We do know that both other parties at the time, in addition to the government, made a commitment to cancel that plant. For example, on September 24, the Leader of the Opposition said, "A Tim Hudak government will cancel this plant," and Mr. Tabuns said on September 26, "We wouldn't build it." Both of these statements were made during that election campaign.

Given that, do you feel that the opposition is trying to wash its hands of any responsibility for making a commitment to cancel it—a commitment our government made and kept?

**Ms. Hazel McCallion:** Well, let's put it this way: I didn't approach the two parties, there's no question about it, but I can assure you that common sense does rule sometimes in politics. As such, if I had approached the leader of either the Conservative or Liberal Party and told them the facts that backed up without any doubt that that plant should not be there, I'd have more respect for three people in that regard, that they would have cancelled the plant. There's no question about it.

The point is, when do you cancel the plant? There's the difference: When? And the when is the key. The plant should have been cancelled before the permit was issued—every justification for it. It's most unfortunate that it was allowed to proceed. You can imagine that as it proceeded, every day, those citizens were on the site, representative citizens, really concerned about the fact that it was allowed to proceed. Needless to say, the citizens were delighted when it was cancelled, but I can

assure you, if you ask them, they too would be concerned that it was cancelled at the wrong time, no doubt about it.

Now, my assumption of the situation is—and I don't know why you're wasting a lot of time at Queen's Park on something that in my opinion is deadwood. Get on with looking after the affairs of the province, which really concern me: transit and gridlock in the GTA. I have to tell you, it should have been cancelled before the permit was issued. Was it cancelled to save positions? Who can deny it?

Thirdly, it's going to cost money. Quite honestly, I am surprised that any party would allow a special purpose body not to supply you with all the details when asked. I can tell you of a special purpose body in Mississauga. If I asked them to give me all the details about a thing and they didn't, they would be on the carpet.

0850

I've told the Premier from day one, the OPA will take you down the drain because of their bad decisions, not doing their homework and making recommendations. You have to depend on people to make good recommendations based on sound research and homework. The OPA, in my opinion, is the guilty party. They're the ones that caused the very expensive cost of the cancellation of this. They are also responsible for the cancellation of the plant in Mississauga with St. Lawrence Cement. They're also responsible for the one in Oakville—special purpose bodies. When you read the newspapers every day, I think the special purpose bodies are on the carpet, not just the OPA.

So, folks, I have to tell you, if you cancel a contract, it's going to cost you money. Quite honestly, I don't know what the cost is, but the point is, it's going to cost. You pay for it and you get on with the work of the province.

I'm absolutely frustrated after being mayor for 35 years to think of the way in which you folks are dealing with this at Queen's Park. The people are fed up with this, "Well, who did it? Who made a decision? Who sent an email?" Is that important? I don't think it is, unless you are after character—sort of trying to bring somebody out who sent an email. The point is, the contract was cancelled at the wrong time. Okay? It was cancelled obviously for political reasons and, thirdly, it's going to cost. Now how much more do you want to know? How much more do you want to know and waste time at Queen's Park? I really don't know. I'll tell you, if it was in Mississauga, we'd can it quickly.

I think it needs some leadership on the part of all parties to get on with the business of the Legislature, because I'll tell you, gridlock is affecting the GTA in a major, major way, and I don't see all the parties getting together to solve that problem. It's time that you got together. The people are fed up with the political games that are played at Queen's Park—political games.

I've talked to Hudak, and I've talked to Horwath and I've talked to Wynne. They know my position very carefully.

What more do you want to know about—bad decision by OPA; bad decision on the second plant in Missis-



sauga; bad decision by OPA on the Oakville plant. So if you want to know who should be charged with the cost of the cancellation, charge the people who operate OPA. It's as simple as that. You depend on them to give you good recommendations; right? Well, you were let down badly—the government and the province and the citizens of Mississauga and of Oakville very badly.

Look at the OPA. Why didn't they supply you with all the details? Did they hold back data? Obviously, from what I read in the newspapers.

And by the way, look at all of your special purpose bodies: Ornge, eHealth, OPA. How many more special purpose bodies do you need that all governments, all parties, appoint and they forget about them? They go off and wander—expense, embarrassment second to none.

Let's zero in on the OPA. They're the ones that caused all this problem. I can assure you; I dealt with them. They ignored any concern of the citizens. They ignored any concerns of the professional staff of our city, and I have the two of them sitting here. They know all the details—absolutely ignored and said, "We're bulldozing ahead." And by the way, find out whether their projections of the need of hydro in the GTA are flawed or not. Nobody has questioned that, except the citizens and the city of Mississauga—flawed. In fact, they don't need any more—I drive along the 401, folks, and there's a big plant in Halton Hills. I would love to get a contract with the government to build a plant and not operate it, and get paid not to operate it. That plant is seldom operational—seldom operational—and yet the owner of the plant gets paid to keep it dormant. Look at the whole issue.

So, in my opinion, zero in on the OPA. They're the ones who should be on the carpet, because we worked with the OPA to try to convince them that they were on the wrong track. They wouldn't listen. They're arrogant—absolutely arrogant.

**Mr. Bob Delaney:** Madam Mayor, thank you very much for those comments. I think you encapsulate very accurately the opinions of a lot of people in our community.

I just want to move on to two brief points. I'd like you to quickly elaborate on—you mentioned earlier that some of the activities here consisted more of trying to find responsibility or who wrote a memo or a character assassination. Would you just elaborate on that very quickly?

**Mr. Ed Sajecki:** Perhaps you could just repeat the—

**Mr. Bob Delaney:** Madam Mayor, in the course of your last series of remarks, you talked about some of the activities of this committee and some of your feelings on it. In particular, at one point you talked about references to who may or may not have made a decision, and you referred to a character assassination. Could you elaborate on that just a little bit, please?

**Ms. Hazel McCallion:** Yes, I did make—I can only assume from reading the newspapers and the comments made that it seems from what is happening at Queen's Park that the people, by the way, who made the decisions—I guess the Premier's gone. Bentley's gone. So

what's the point? Is it sort of to get to say, "Oh, well, that guy did it; that guy made the decision to cancel the plant"? I don't know, folks. Maybe—I don't know—people at Queen's Park are out of touch with the public, but I'll tell you, I'm in touch with the public in Mississauga, and I just find it so strange some of the questions that are asked. It looks as if you're after individuals.

I don't care who made the decision to cancel the plant at the time they did. It was a wrong decision—period. It doesn't matter who did it. It was a wrong decision. It was a wrong decision to allow the plant to go ahead. It should have been cancelled before the permit—wrong decision. Is it important who did it? It's a wrong decision, and you're going to pay for it. The taxpayers are going to pay for it. It's as simple as that. So why emphasize this, "Who did it? What email went?" I don't know. I don't follow it.

**Mr. Bob Delaney:** In that vein, Madam Mayor, Premier Wynne has committed, in the throne speech, that there's going to be more local decision-making in the siting of power plants and other energy infrastructure. Would you agree with that?

**Ms. Hazel McCallion:** Well, you know, it's interesting that the province every so often comes out with legislation that overrules—overrules—the jurisdiction and responsibilities of local government. I'm always amazed at it. Even though we spend a lot of time and a lot of money on having an official plan—that the province insists we have, right? It's got to be revised every so often. That's another mandate of this system, and we have to have secondary plans and all that. Then they'll come out with something that they—

**The Chair (Mr. Shafiq Qaadri):** Mayor McCallion, with respect, I'll need to intervene there to pass it to the Conservative side.

**0900**

Before I do that, I would just like to raise a quick issue. It was brought to my attention that photographs that are being taken may be used for different purposes, and one of the caucuses was not particularly pleased. I would just simply say, on behalf of the committee, that we had decided on day one that we would allow camera recording. As you know, this committee is streamed live on the Web and then broadcast if Parliament is not sitting.

To date, this is our sixth meeting. We've had probably more than 50 different cameras and news organizations. We have TVOntario, ably represented by Steve Paikin. We have members of staff and so on. There are a lot of photographs floating around. Some of the caucuses may not be pleased where those photographs appear, but I think it's a bit late in the day for us to go back on that. So they'll need to absorb it.

With that, I'd now like to pass it to the Conservative side. Mr. Fedeli.

**Mr. Victor Fedeli:** Thank you very much, Chair, and welcome, Your Worship. It's great to see you again. Chair, in full disclosure I have to start off by saying I'm a huge fan of Her Worship. Hazel McCallion and I spent



some time together at the government leaders' forum in Washington at the invite of Bill Gates. If you recall our lovely meeting down there nine years ago, we had considerable opportunity to chat, and I have followed your career since meeting you that day as a young mayor following in your footsteps, and hopefully following well with your guidance. So I wanted to have full disclosure right off the bat.

Mayor McCallion, you continue to mention that this should have been cancelled before the permit was issued. Can you tell us when the permit was issued? That's one date that I haven't been able to track here yet.

**Ms. Hazel McCallion:** We have the details. The exact date, we can get.

**Mr. Victor Fedeli:** Yes, I appreciate that. Thanks.

**Ms. Hazel McCallion:** May 28, 2009.

**Mr. Victor Fedeli:** May 28, 2009, is when the permit was issued. Obviously, you've emphasized several times, this should have been cancelled beforehand.

**Ms. Hazel McCallion:** Yes. Well, it should have been cancelled with the pleas that the city and the citizens made to the government. Yes, it should have been cancelled then.

**Mr. Victor Fedeli:** In your opening, you gave us what I would consider to be a pretty good history. I'm not sure that I was able to take all of the notes, but I'm going to ask you to fill in some of the details, if that's okay. Can you hear me okay?

**Ms. Hazel McCallion:** Yes, I can hear you.

**Mr. Victor Fedeli:** I'm going to ask you to fill in some of the details. Back in 2004 when the Mississauga site was first announced, you said something—there was a certain site at Mississauga, and I never got the name. Which site was it in Mississauga? You had a name for it.

**Ms. Hazel McCallion:** The Loreland site. When the OPA—they went out on a proposal call. They came up with two sites, one which got approved and is built on the border of Brampton in the right location, no problem—

**Mr. Victor Fedeli:** What's that site called?

**Ms. Hazel McCallion:** They announced the Loreland site at the same time in the wrong location.

**Mr. Victor Fedeli:** What's the name of the one in Brampton? I'm just trying to put my map together.

**Ms. Hazel McCallion:** They called it Greenfield North and Greenfield South. The Greenfield North one got approved and is built.

**Mr. Victor Fedeli:** And that was, in your opinion and in the opinion of the community that was consulted, a good site?

**Ms. Hazel McCallion:** No, they weren't consulted at all.

**Mr. Victor Fedeli:** No, no. The Greenfield North.

**Ms. Hazel McCallion:** It was in the right location.

**Mr. Victor Fedeli:** Oh, it was in the right location. I understand. You had mentioned a couple of—

**Ms. Hazel McCallion:** It was in an industrial area with no residential anywhere near it, etc. As I say, the Sithe one that I mentioned, which got completely approved by our staff and citizens—right location. If you

get it in the right location, the municipality will agree with it. Put it in the wrong location: You've got a problem.

**Mr. Victor Fedeli:** I'm trying to find—between the documents that we did receive and some of what you're saying today, I'm just trying to put these names together. The Sithe location: Was there a name for that project as well?

**Ms. Hazel McCallion:** What was it called?

*Interjection.*

**Ms. Hazel McCallion:** Sithe.

**Mr. Victor Fedeli:** So they just called that the Sithe location? Okay. I was just—

**Ms. Hazel McCallion:** In fact, the citizens worked with Sithe and got some controls that they wanted in the emissions and the height of the stack etc. The citizens worked and gave approval, which is quite unusual.

**Mr. Victor Fedeli:** There were a couple of other—did you mention Lakeview, or was that in the discussion that I read about? Did you mention today Lakeview?

**Ms. Hazel McCallion:** Well, Lakeview was the coal generation plant. In fact, I worked for the company that built it and I had the privilege of pushing the button to destroy it, which is quite something.

**Mr. Victor Fedeli:** Is that the one that Elizabeth Witmer ordered closed? It was before my time.

**Ms. Hazel McCallion:** Yes. Anyway, Lakeview was looked at by OPG as a gas generation plant, and they were working with Enersource, our hydro commission, to jointly build and operate it. They would use Enersource as a part of the program. Mr. Smitherman, who was Minister of Energy at the time, came out to Mississauga one day and announced that there would not be a gas generation plant on the OPG lands. So that killed that project.

**Mr. Victor Fedeli:** You mentioned Enersource. I don't know what that is; I'm a northern boy.

**Ms. Hazel McCallion:** That's our local hydro, the privatization of our local hydro called Enersource. It's our hydro utility.

**Mr. Victor Fedeli:** As mayor, are you involved in Enersource? Do you get to sit on it as mayor?

**Ms. Hazel McCallion:** Yes.

**Mr. Victor Fedeli:** Was the Lakeview site a good site? I'm not familiar with it. Was the Lakeview site a good site?

**Ms. Hazel McCallion:** Was the Lakeview site what?

**Mr. Victor Fedeli:** A good site, an acceptable site.

**Ms. Hazel McCallion:** Well, let's put it this way: It was serviced by the gas line and, of course, it was a generating site and therefore had complete contact with the distribution.

**Mr. Victor Fedeli:** Transmission facilities were there, that kind of thing?

**Ms. Hazel McCallion:** Yes. Well, it was a generating site, so it had everything that was needed, in other words, to provide a gas generation plant.

**Mr. Victor Fedeli:** What was Enersource's role in that? What would they have done with that Lakeview site back in—

**Ms. Hazel McCallion:** Enersource was involved—they were asked by OPG to get involved, that if it became a gas generation site, then Enersource would be involved in the operation of it.

**Mr. Victor Fedeli:** Okay. What year was that? Do you recall?

**Ms. Hazel McCallion:** What year would that be? That would be 2007?

**Mr. Victor Fedeli:** Something in that area?

**Ms. Hazel McCallion:** Sorry, I can't give you the date on it.

**Mr. Victor Fedeli:** That's okay. So around 2007, give or take a year or so either way?

**Ms. Hazel McCallion:** Yes.

**Mr. Victor Fedeli:** Okay. So back when you first heard about this decision in 2004 about the Loreland site, you had mentioned then that you immediately, obviously, were opposed to that back in 2004 and you said you sort of expressed at every opportunity your displeasure with that. When would you have first said something to the Liberal government, which was in power at that time, about your displeasure with that?

**Ms. Hazel McCallion:** Well, I would say that the government knew about our opposition from day one, no question about it. In fact, I have to tell you that Dwight Duncan was the Minister of Energy, and he was very concerned. We worked together, and I have to tell you that we were very cautious of dealing with it because we were concerned about being sued for not approving it, both the government and we. I said to staff, as staff knows, "We must follow every rule," because we don't want to open the door for any lawsuit of not approving this, right?

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**Mr. Victor Fedeli:** So what did you do formally, then, to express your opposition to the gas plant back in 2004 and ongoing?

**Ms. Hazel McCallion:** We were constantly beefing about it.

**Mr. Victor Fedeli:** Was there anything more formal?

**Ms. Hazel McCallion:** I appeared before—I can't recall the times, but I certainly took it directly to the Premier.

**Mr. Victor Fedeli:** Did you chat with your community about it in any kind of a forum?

**Ms. Hazel McCallion:** What?

**Mr. Victor Fedeli:** Did you chat with your community—

**Ms. Hazel McCallion:** Talk to the community?

**Mr. Victor Fedeli:** Yes.

**Ms. Hazel McCallion:** I didn't have to; they talked to me.

**Mr. Victor Fedeli:** Did you have town halls or anything along that line?

**Ms. Hazel McCallion:** We had all kinds of meetings on it—all kinds of meetings. The citizens were just obsessed with the fact that this could happen.

**Mr. Victor Fedeli:** So you had meetings from the announcement in 2004 all the way through—

**Ms. Hazel McCallion:** All the way through.

**Mr. Victor Fedeli:** —to 2011—

**Ms. Hazel McCallion:** Yes.

**Mr. Victor Fedeli:** —seven years', basically, worth of meetings, public forums, that type of thing?

**Ms. Hazel McCallion:** Yes. At the beginning of May 2005, our planning and development committee directed its staff to review our land use policies that dealt with power generation. I'll tell you, we became very upset that with the authority and the lack of homework done by the OPA, they could be landing power plants right in the midst of residential areas with no concern at all. We became very—not to trust the OPA.

**Mr. Victor Fedeli:** I understand. So were there any citizens in favour of the power plant at all?

**Ms. Hazel McCallion:** Not that I know.

**Mr. Victor Fedeli:** In those seven years from when you first heard about it in 2004 till September 2011, when you heard of the cancellation, how many people, do you think, were involved from the citizenry? Is this a small amount of people, in the hundreds or in the thousands?

**Ms. Hazel McCallion:** Well, I attended a meeting one night at an auditorium at one of our high schools that was standing room only—I would say, 300 to 400.

**Mr. Victor Fedeli:** In that one night?

**Ms. Hazel McCallion:** Yes.

**Mr. Victor Fedeli:** And this would have gone on over the seven years, nights like that?

**Ms. Hazel McCallion:** It was a strong opposition—very, very strong.

**Mr. Victor Fedeli:** How many times do you think you would have met with former Premier Dalton McGuinty about the gas plant issue?

**Ms. Hazel McCallion:** I can't tell you how many times, but the province—

**Mr. Victor Fedeli:** A couple or lots?

**Ms. Hazel McCallion:** The MPs and everybody were well aware of the opposition. The citizens did their homework.

It's like the citizens that worked on the Sithe plant. They did their homework; they had some very qualified individuals that dealt with the Sithe application that technically had a lot of knowledge.

Our citizens, when they undertake to be against something, it's not just "not in my backyard"; it's justification for being opposed to it.

**Mr. Victor Fedeli:** So you had an alternate plan available. The Sithe location was, in your citizenry's position, an alternate and acceptable plan?

**Ms. Hazel McCallion:** We asked the staff to look at areas where a power plant could be. In other words, we are not opposed to power plants; we are not opposed to gas power plants. The Sithe application is a perfect example. It's not a case of, "Don't come near Mississauga with gas plants."



**Mr. Victor Fedeli:** Would you have ever brought this to the energy minister, and which one or which ones, plural—energy ministers, would you have talked to about this?

**Ms. Hazel McCallion:** One was Dwight Duncan, who was Minister of Energy at the time.

**Mr. Victor Fedeli:** Okay. Would you have talked to George Smitherman when he was Minister of Energy or just minister, period?

**Ms. Hazel McCallion:** I never talked to George Smitherman very often on any matter.

**Mr. Victor Fedeli:** Okay, that's fair. Thank you, Your Worship. I just have to smile for a moment. You always—

**Ms. Hazel McCallion:** I found George Smitherman very difficult to deal with.

**Mr. Victor Fedeli:** Well, I was a mayor for seven years, too, and I did have a finger pointed in my nose the odd time, so I—

**Ms. Hazel McCallion:** I came out to a meeting one night on an energy issue, and he wouldn't allow me to speak—as mayor. I'll never forget that.

**Mr. Victor Fedeli:** Thank you for sharing that.

Did you meet with Energy Minister Brad Duguid at any time on the gas plant issue?

**Ms. Hazel McCallion:** Yes, I did discuss—most of my discussions were with Dwight Duncan, and he was very supportive of our position.

**Mr. Victor Fedeli:** So why didn't it get cancelled, then, if he was supportive of your position back then, do you think?

**Ms. Hazel McCallion:** You ask him.

**Mr. Victor Fedeli:** Well, we might have to. Thank you.

One final on that angle: Did you meet with Minister Chris Bentley about the gas plant at any time?

**Ms. Hazel McCallion:** No, never. I never met with Mr. Bentley.

**Mr. Victor Fedeli:** Okay. That's fair. You've just made me chuckle today. I'm sorry. I've lost my train of thought there for a moment. That was quite an interesting exchange.

Let's go back to the fact that you did have so many public consultations over seven years with hundreds and obviously thousands of residents opposing the plant; outright condemnation from, in my opinion, one of the most respected mayors in the country who tried to stop this plant, yet the Liberals went ahead and built it anyway. Why do you think that was, Mayor?

**Ms. Hazel McCallion:** Don't ask me. To me, it was very, very disappointing to think that the opposition—which was certainly justified, no question about it. I am conscious of the fact that if you're going to cancel a project, you better be—you know, any level of government that cancelled projects, you better be very sure that you're justified in doing it.

Obviously, and what maybe you don't realize—say they had cancelled the project. Do you think they would not have sued the government? Even if they cancelled the

project, you're going to be involved in costs, and very high costs, because think of all the consultants and all the time that was spent through the process and OMB hearing etc.

The point is the difference between the cost of cancelling before a permit is issued, and when you go to court, you're hanging out to dry as to what the costs would be; you have no idea. But to cancel it when it's half up or the portion that it was, then you know that there's additional costs. There's no question about it. But there would have been a very heavy cost if they had cancelled it before.

We were very conscious of it, if we put any roadblock in the way. That's why we treated it with tender loving care, to make sure that we did nothing. Even though we challenged them and took them to the OMB, we challenged them on environmental concerns as it was right next to the creek etc. We did everything we could to try to prevent it from happening. But there would have been a cost. Nobody has ever asked that: What would have been the cost if it had been cancelled before a permit was issued. It would have been a heavy cost because if it goes to court, you know what happens. They can build up costs in a major way.

**Mr. Victor Fedeli:** So, only when it appeared the Liberals were going to lose five seats in the election did they actually listen to the people. Would you concur with that or would you expand on that?

**Ms. Hazel McCallion:** Well, obviously they didn't listen to the people—there's no question about it—until they decided that maybe it was to their advantage to listen to the people. There's no question about it.

**Mr. Victor Fedeli:** Thank you.

**Ms. Hazel McCallion:** I think that's a fact. Who could deny that, or anything? The point is, they didn't listen to the people, and the OPA, of course—you know, please be careful of special purpose bodies.

**Mr. Victor Fedeli:** I think we've got that message from you loud and clear today.

**Ms. Hazel McCallion:** Wowee. I tell you, they're out of control.

**Mr. Victor Fedeli:** Mayor, why do you think the Liberal government didn't consult with you before 2004? Right off the bat this morning, you said in your opening statement, in your opening sentence, that in 2004, the Liberal government announced the Loreland site—no consultation, no communication. Why do you think they didn't speak to you as mayor of Mississauga beforehand?

**Ms. Hazel McCallion:** I don't know. It was the OPA that made the announcement, not the government. The OPA made the announcement.

**Mr. Victor Fedeli:** And we heard just two days ago from the secretary of cabinet telling us it's the government that's driving the bus. I would go back to asking you, then: The government did not consult you? The Liberal government did not consult you before the announcement was made in 2004?

**Ms. Hazel McCallion:** No, no. They depended completely on the announcement of the OPA.

**Mr. Victor Fedeli:** Okay.



**The Chair (Mr. Shafiq Qaadri):** About a minute.  
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**Mr. Victor Fedeli:** I've got about a minute. I don't want to start down another line of questioning when I only have a minute left. I think I'll just leave it at that. I've got another completely different line of questioning, but it's not going to give you the proper amount of time to answer, and I think you'll end up just being cut off by the Chair, so I'll leave it at that.

**Ms. Hazel McCallion:** I'd be glad to answer all questions.

**Mr. Victor Fedeli:** I know you would. Thank you very much, Your Worship.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli. Thank you, Mayor McCallion.

Now to the NDP, to Mr. Tabuns.

**Mr. Peter Tabuns:** Mayor McCallion, thank you very much for being here this morning. It's a pleasure to have your perspective on this, because you've had a long history in dealing with this particular plant.

I just wanted to address one of the things that you raised. We've engaged in this inquiry process in part because it has been extraordinarily difficult for us to actually get the truth out.

**Ms. Hazel McCallion:** The true cost.

**Mr. Peter Tabuns:** Yes. With regard to the Oakville plant, the government has maintained all along that it only cost \$40 million to cancel. It's been clear from testimony recently that we're talking more in the \$600-million to \$800-million range. So, the broad outline, we agree with you: A bad planning decision was made, a cancellation was undertaken to save some political seats, and the public is stuck with the cost. We know those three facts. But the exact amount that was spent, that's still not clear, and it took an awful lot of fighting to get many of the documents that we're working from today. I think your government would be a lot more open than the one that we're dealing with. So it's unfortunate that we have to go through an inquiry, but, frankly, it has taken this level of attention to even get some of the fundamental issues and information on the table. I just wanted to say that, because you've asked why we are meeting and why we are inquiring. It's because of that. This is a much less open government than you would run in Mississauga or, frankly, than the city of Toronto would run.

I'm going to go back to some of what you've said. After this plant was announced in 2004, you contacted the decision-makers. You said you called the chair. Who was it that you called at the time?

**Ms. Hazel McCallion:** I don't know. I don't know the name of the chair at the time.

**Mr. Peter Tabuns:** Fair enough.

**Ms. Hazel McCallion:** He'll remember, though.

**Mr. Peter Tabuns:** I'm sure that psychological counselling is part of the benefits package for those who work in the area.

You did talk to Minister Duncan at the time?

**Ms. Hazel McCallion:** Oh, yes.

**Mr. Peter Tabuns:** What did you tell him?

**Ms. Hazel McCallion:** Oh, I told him of our opposition and told him our justification to the opposition, because, you know, the old story is that some municipalities don't want anything in their municipality. I wanted to assure him that we are not opposed to gas generation plants, but in the right location and in a location that the council of the city and the staff, from their professional opinion, recommend. That's all we ask for on anything, even telecommunications towers that we're having problems with. We'd like to have the authority. It is our municipality, and we have an official plan. We go through all this official process, and then along comes the federal government or the provincial government and says, "Oh, that can go in," and you have no control over it. That was what was happening on gas plants—no control.

**Mr. Peter Tabuns:** But you told him there were fundamental problems with this location. Did he make any commitment to reassess the location, cancel the plant or relocate the plant at that time?

**Ms. Hazel McCallion:** We immediately asked the city to look at—as I read to you, in the beginning of 2005, our planning department directed staff to review our land use policy, the detail that dealt with power generation; in other words, to make sure that we had looked at all the zoning in the city and determined where power plants could go that would be acceptable, like Sithe, that went in the right area and was acceptable by both the citizens and the city council, as well as the staff of the city.

**Mr. Peter Tabuns:** You fully informed the Minister of Energy that they had made a mistake locating here?

**Ms. Hazel McCallion:** Yes.

**Mr. Peter Tabuns:** What response did you get from the minister?

**Ms. Hazel McCallion:** Well, I have to tell you that Minister Duncan at the time was very supportive of our position, but there was a contract awarded, right? You're kind of stuck when there's a contract awarded. But he was very sympathetic, and I have to tell you, both he and I worked together to try to find ways to cancel the plant; no question about it. But we also realized that the cancellation of the contract would be a cost to the taxpayers of Ontario.

**Mr. Peter Tabuns:** Now, you may be aware that with this particular plant, the developers had a great deal of difficulty getting anyone to give them money.

**Ms. Hazel McCallion:** That's right.

**Mr. Peter Tabuns:** In fact, it took them years. So they had a contract, but no financing.

**Ms. Hazel McCallion:** They had a contract and no financing. We hoped they would never get them.

**Mr. Peter Tabuns:** So if they had been cancelled at that time, I'm assuming it would have been far less expensive because, in fact, it was an empty shell.

**Ms. Hazel McCallion:** Far less expensive, but maybe somebody should take the time to estimate what it would have cost if the contract—if they didn't cancel that. Nobody has raised that issue. They talk about the cost of cancelling the contract with it half up, but I can assure



you, the costs of cancelling the contract any way through the process would have been a very costly exercise. Nobody is asking that question. It would be interesting if somebody would do an assessment of that and compare it to what it's going to cost.

Secondly, in the negotiations on the second plant that OPA wanted to put into Mississauga, TransCanada, which was TransCanada Pipelines, had other contracts with the province. Therefore, there could be more acceptable negotiations with the cancellation of that plant, and I would think the province took advantage of that. If you have a company that is already doing work for you and you have to cancel a contract, I would think that TransCanada Pipelines—the size of the operation—would consider that, because that plant got cancelled, and with the other work they're doing for the province, there would be some agreeable negotiations.

**Mr. Peter Tabuns:** Mayor McCallion, you've said that you assessed the need for power in the area, and showed that, in fact, this plant was not necessary.

**Ms. Hazel McCallion:** Yes. Mr. MacKenzie of Oakville, a qualified engineer, had reviewed the entire projections of the OPA in regard to the hydro requirements in the greater Toronto area and had shown, without a doubt, that the projected requirements by the OPA were flawed.

**Mr. Peter Tabuns:** Would it be possible for you to file a copy of that study with this committee?

**Ms. Hazel McCallion:** Yes. I'm sure we could get it from Mr. MacKenzie, because he was very active in the opposition to the Oakville plant. We'd be glad to get it.

**Mr. Peter Tabuns:** Okay. We look forward to receiving that.

As you may know, power demand in Ontario has either been flat or dropping since around 2006.

**Ms. Hazel McCallion:** By the way, when we went through all this process, there was a municipality that the mayor even came down to some of our public meetings saying, "We want the plant. We want the plant. We'll take it. It'll create jobs," etc. OPA wouldn't listen to it.

**Mr. Peter Tabuns:** Do you know which town that was?

**Ms. Hazel McCallion:** Nanticoke. Nanticoke wanted the plant. The mayor came to our public meetings, if you can believe it, saying, "Look, we want the plant."

**Mr. Peter Tabuns:** Thank you. The Ontario Power Authority provided a chronology for the Minister of Energy, and it indicates that you met with Premier McGuinty in August 2008 regarding the Mississauga plant. Do you have any recollection of what your discussion was with the Premier in 2008?

**Ms. Hazel McCallion:** On which? The Loreland or the—

**Mr. Peter Tabuns:** On the Loreland plant.

**Ms. Hazel McCallion:** On the Loreland plant? No, I don't recall, other than, "It should be cancelled."

**Mr. Peter Tabuns:** You have made the point a few times that the plant was cancelled at a very expensive moment.

**Ms. Hazel McCallion:** That what?

**Mr. Peter Tabuns:** That the plant was cancelled at a time when the expenses would be higher—

**Ms. Hazel McCallion:** Well, let's be honest. It was during an election, and politicians play some unusual games during an election, especially at the provincial and federal levels.

*Interjections.*

**Mr. Peter Tabuns:** No. No, I know, at the city level, that's not a factor.

You spoke with the Toronto Star in October 2012, and they asked you about this plant and you said, "They cancelled it when it was half up. Why did they cancel it? Whether you can prove it or not, it's obvious that they cancelled it at election time with four people (Liberal candidates) involved in the area that could be affected. If you cancel a contract you've got to pick up the tab for it, but I'll tell you, you pick up a big tab when it's half-built and then has to be torn down."

Would you continue to agree with that analysis?

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**Ms. Hazel McCallion:** Well, yes. First of all, we are insisting on it, as a municipality, that the plant—in fact, we're withholding all the payments that the company made to us, which is around a couple of million, at least in fees. We're not returning those fees until the plant is taken down and the site replaced to its original state, so they won't get their money back on the building permit fees or the fees for the processing of the application until that is completed. We withhold those funds until then, and we'll withhold a portion of all the work we spent on it, so they won't get it all back, either, right? Because we spent a lot of time, our staff, and we're certainly not going to pick up the tab for that.

**Mr. Peter Tabuns:** And are they in fact in the course of demolition right now, and restoration of the site?

**Ms. Hazel McCallion:** I had a citizen approach me a couple of weeks ago unhappy with the progress, so our inspector is on the site from the building department, Mr. Sajecki's department, watching the progress of the demolition.

**Mr. Peter Tabuns:** So it is ongoing now.

**Ms. Hazel McCallion:** And a lot of the equipment that was ordered can be salvaged. It's the structure. But a lot of the equipment can be salvaged and moved to wherever the new plant is going to be, so there is some recoup on it.

But let me ask you: You're talking about the expenses etc. Don't you think the special purpose body is the one that should be supplying you with the cost of the cancellation of the plant? They're the ones that approved it. They're the ones that went through the process. Why aren't they giving you the cost?

**Mr. Peter Tabuns:** Mayor McCallion, we are here in part because we asked for the material, and it was withheld from us. The ask that we make is to the Minister of Energy. He resisted providing us with the documents. It took the resolution of the estimates committee and a debate in the Legislature to even get a first slice of docu-



mentation. We could not get the numbers. The government would not release them to us. The Ontario Power Authority reports to the minister and to the Premier, and has not been forthcoming without direction from the Legislature.

You ask a reasonable question. If I was a city councillor in Mississauga, and I had a problem with the works department, I'd go to the works department. We're in a different situation here and one that's caused frustration all around, and obvious frustration for you because you asked an awful lot of these questions, I'm assuming, and you weren't getting answers.

Were you ever given a copy of the contract with Greenfield South, with the Loreland—

**Ms. Hazel McCallion:** All I ask you is don't hold up the operation of the Legislature of this province as we have thousands of people unemployed who need a job. We have thousands of people, and there are so many things you should be getting on with. Why hold it up to get debate in the House that, in my opinion, is a waste of time, I've got to tell you.

Let's get on with putting this province back on the map. We're in deep trouble in this province, and gridlock in the GTA is affecting our economic progress. We are the engine of Canada, and the engine is sputtering because of the lack of the three parties getting together at Queen's Park, leaving their politics at the door and sitting down and saying—and I've said this to Horwath and to Hudak and to Wynne—"How can we get this province out of the mess we're in?" That's what should be concentrated on. Instead, the people are sick and tired of hearing this, "Oh, we didn't get all this. We didn't get this email. We don't know what this cost is" and such. You're going to pick up a heavy cost for cancellation of this plant. The cancellation of the one in—and maybe you should be asking whether the province should get rid of the Ontario Power Authority. That's the question you should be asking.

**Mr. Peter Tabuns:** And is that what you would recommend?

**Ms. Hazel McCallion:** Pardon?

**Mr. Peter Tabuns:** Is that what you would recommend?

**Ms. Hazel McCallion:** That's what I would recommend.

**Mr. Peter Tabuns:** Would you, as mayor of one of the largest cities in Ontario, void a contract without seeing it?

**Ms. Hazel McCallion:** Pardon?

**Mr. Peter Tabuns:** Would you void a contract without seeing it? Would you cancel a contract without figuring out in advance what the cost would be?

**Ms. Hazel McCallion:** I wouldn't cancel a contract without seeing it and not saying, "Well, wait a minute." A mayor or a Premier or anybody—a minister in a position—are they able to read all the details of a contract? No. They have to depend on staff. I don't read all bylaws that are passed by the city, even though there's a Toronto newspaper—I don't know the name of it—that thinks I

should, and wrote an editorial saying I should read every bylaw. I don't know the name of it; it's some newspaper in Toronto, right? I had to go down and prove to them that I don't read all bylaws and there isn't a mayor in the province that reads all bylaws etc. But you have to depend on staff. I depend on staff, and thank God I have good staff in this city that follow the rules and regulations. They give me professional advice, not political advice.

**Mr. Peter Tabuns:** They have a good reputation, I know.

In 2008, you were quoted as saying that if Sithe, the power plant you were referring to, is the winner in an OPA contest, the province is going to have to answer to the Clarkson airshed study. Can you tell us what the Clarkson airshed study was?

**Ms. Hazel McCallion:** Yes. The southern part of Mississauga has a lot of industrial development, and we're very proud of it. We have St. Lawrence Cement, we have Petrofina, we have Petro-Canada etc. We have a lot of industrial, a great asset to the city. But it has caused a lot of pollution. We have a lot of trucking companies down there as well etc.

That airshed was very stressed, so we convinced the government to go ahead with a study of that area. The study was conducted and the study said that the area is overstressed. One of the big impacts on that area is the Queen Elizabeth that goes through. As a result, even when the Sithe plant moved in, we had this study that clearly indicated that we are now adding to what they called an overstressed area in regards to pollution.

That study, in regards to the Sithe plant, was able to be managed with the fantastic involvement of the citizens of the area who worked with Sithe to make many changes to their plan from an environmental point of view, to the point that the citizens, with some experts, really technical people who were representing the citizens, were able to bring it down to the point that it was felt that the impact on the airshed would not be serious. There would be some, no question about it, but not to the degree because of the work that had been done with Sithe. As a result, the citizens approved the Sithe project.

**Mr. Peter Tabuns:** Okay. When this plant was cancelled, were you—

**The Chair (Mr. Shafiq Qaadri):** About a minute, Mr. Tabuns.

**Mr. Peter Tabuns:** Pardon?

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Peter Tabuns:** When this plant was cancelled, were you given a personal call about it? Were you informed personally, or did you gather it from the media?

**Ms. Hazel McCallion:** I was invited to a press conference in which it was announced that the plant was cancelled. I knew it in advance. I was called by Charles Sousa, our MPP in Mississauga South, who said that—I knew what was going to happen at the press conference, yes.

**Mr. Peter Tabuns:** And were you told why the decision was made at that point?



**Ms. Hazel McCallion:** No, other than they agreed with the citizens that it should have never existed in the first place.

0940

**Mr. Peter Tabuns:** And the minister's documents—Minister Bentley shows a call with you on October 28, 2011.

**Ms. Hazel McCallion:** Pardon?

**Mr. Peter Tabuns:** Minister Bentley released a document showing that he had a phone call with you on October 28, 2011.

**Ms. Hazel McCallion:** To me?

**Mr. Peter Tabuns:** Yes. Do you have any recollection of a phone meeting with him on this?

**Ms. Hazel McCallion:** No, I don't have any recollection. I'm sure he did.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns. To Ms. Cansfield of the government side.

**Ms. Hazel McCallion:** I think he did, yes.

**Mr. Peter Tabuns:** Thank you very much.

**Ms. Hazel McCallion:** I don't recall.

**The Chair (Mr. Shafiq Qaadri):** Ten minutes.

**Mrs. Donna H. Cansfield:** Thank you, Mayor McCallion. It's always nice to see you. I remember those days when you and I had the discussion about Lakeview becoming a generating station with Enersource and Borealis and not everybody was in favour. There was opposition even then to what we had been proposing for Lakeview.

This has been a long and ongoing process. It started way back in 2003, as I recall, when we first came into government, and I don't think there is a party here that doesn't believe that the site was a difficult site and an inappropriate one, and in fact the plant should have been cancelled and was subsequently. But I think it's also really important to share with everyone just how difficult the whole process was, and so I'm going to refer you back to your own planning documents.

In 2003, Mississauga actually had their own official plan put into place, but in 2005, city council directed staff to undertake a review aimed at identifying where existing zoning bylaws may need to be amended to implement Mississauga's plan, and establishing appropriate regulations, criteria, for the location of power generating facilities and effect changes to the draft comprehensive zoning bylaw to implement Mississauga's plan, consistent with and appropriate with certain regulations. In March 2006, city council accepted the staff recommendations and approved the Ontario Power Authority's 48 and modified your zoning bylaws.

I'm getting this—and I'll share this information with everyone.

Subsequently, what happened was, after the land was purchased for the site and the appeal went to the OMB, because it was zoned as industrial, commercial and power, that's why it was overturned at the OMB and the site was an acceptable site within the official plan.

I appreciate that you did go back to the OMB and you argued that that was not your intent, and that's fair. But

the fact remained that it made it particularly difficult and exacerbated the situation when it came to trying to get out of that site location. Ultimately, the OMB wouldn't accept your position and overturned in favour of Greenfield, which made it very difficult as well for the government.

Again, all I'm suggesting—just to put it on the record—is that the site had been approved as commercial, industrial and power generation by the city's zoning bylaws and the OMB accepted that. They wouldn't accept that it wasn't according to Mississauga's council at the time. Again, I think time had lapsed and people realized that it wasn't an appropriate site and there needed to be some changes made.

I also appreciate that the other problem that came into being was that when the power generation plant was actually determined—its location—you had to give the permit. By law, you had to—as the mayor indicated, you were forced to, but you didn't realize they were going to put it 125 metres from the houses. That's the problem.

So in lies the challenge within the whole issue around site location, and I raised this yesterday with the OPA. There has to be within the original contract negotiations and procurements an opportunity to look at even if a site is zoned that way, it still has to be appropriately located within that site. It can't be left up to the proponent to just choose wherever because it's closer to a hydro line or whatever.

I just wanted to put this on the record because I think it's important. It shows that not only were you frustrated, we were frustrated, and that we in fact were hamstrung by the results of the OMB because of an official plan, and we worked very closely with you to try to overturn that, to see if there was anything that we could do. And I know that even individuals went to the OMB to try as well to get some of those changes done. The OMB was pretty firm on its position.

So I guess, at the end of the day, I'm pleased the plant is cancelled. I've always believed this site was inappropriate. It was far too close. I hope we all learned from this situation, and that in fact as power-generating sites are determined in the future, regardless, in this province, there is a stronger collaboration between the municipality—because even in this case, the region of Peel had approved this, right? That's the challenge you've got. You have two tiers. It's a very complicated process.

So I hope what we do is what the mayor has said: We all learn from this, and that we have a far more integrated approach to site procurement for anything that impacts local residents in an area where there's such density. I think we had the chance to hear from you to say how the opposition was there in the beginning from the constituents, as well as maybe the difficulty at times with the proponent. I'm hoping that all lessons will ultimately end up in a far better process for the Ontario Power Authority and that they actually put in their requirements for procurement site allocation that take into consideration all the things that we've talked about today and in particular that you've talked about, Mayor.



I'd like to thank you so much for coming and being a part of enabling us to in the future make some good decisions, for expressing clearly your constituents' perspectives and for enabling us to hopefully do a better job in the future. Thank you very much.

**The Chair (Mr. Shafiq Qaadri):** Mr. Delaney?

**Mr. Bob Delaney:** Madam Mayor, was there anything that you wanted to add to Ms. Cansfield's comments?

**Ms. Hazel McCallion:** Let's put it this way: My comment is, if it was a project in Mississauga I'd say, "We made a mistake. It's going to cost money. Let's find out what the cost is." No matter what it is, you're going to pick up the tab for it, and if it goes to court you don't know what the cost is. We all make mistakes; all levels of government make some mistakes at times. If you're going to cancel a contract, you've got to know the implications of it.

But let's get on with the business of the province. The point is, whether it costs \$800 million, \$600 million or \$1 billion—by the way, the G20 in Toronto cost \$1.5 billion, I believe. It had a serious impact on the economic progress of Toronto and the greater Toronto area. There has been less fuss about that than the cancellation of the gas plant that the citizens wanted. The citizens never asked for the G20; the citizens wanted the gas generation plant killed. Killed at the wrong time, yes, but even if it had been killed before the permit was issued, it would have cost the province. The government listened to the people eventually; eventually they listened to the people. Wrong timing: no question about it. But they did listen to the people. Isn't it interesting? I hear you folks say at times, "We've got to listen to the people." Well, the people of Mississauga spoke strongly; the council spoke; the staff spoke: "The wrong location for this plant." It should have been cancelled. Cancellation is going to cost money. Cancelled at the wrong time? Yes; no question about it. Because it was cancelled at the wrong time, there are going to be additional costs; no question about it. It's the way it is.

Let's get on with it. The people of Mississauga are fed up hearing all this controversy at Queen's Park over something that they wanted cancelled, the government agreed to cancel it, and you folks are making a big fuss about it. Come on. Let's get on with the business of the province, folks.

**Mr. Bob Delaney:** Madam Mayor, MPP Sousa in particular was very active on this particular project. Would it be fair to characterize MPP Sousa's efforts with the citizens' groups as proactive and to say that it was he who really spearheaded a lot of the local work by the MPPs to raise the awareness on this issue and get the plant cancelled?

0950

**Ms. Hazel McCallion:** By the way, Charles Sousa and our MPs in Mississauga were behind us all the way on this, I've got to tell you. They knew, because they're very close to our citizens. Charles, Bob and Harinder Takhar really are in touch with the citizens. If not, we make them in touch because we call them every so often together etc. But they are in touch, and they were—

**Mr. Bob Delaney:** Truer words have never been spoken.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mayor McCallion. To Mr. Fedeli.

**Ms. Hazel McCallion:** So you can't blame—what you folks should be concentrating on, and I don't see it, is the OPA. I'll tell you, you'd better challenge their decisions because in my opinion, on the gas plants in Mississauga, they have been arrogant. That's my position. I'll tell you: Watch your special purpose bodies. They'll take any party down to defeat.

**Mr. Victor Fedeli:** Thank you very much for those words of wisdom. By special parties, you also were referring to eHealth and Ornge, I think, earlier. So thank you very much for reminding us of that.

Your Worship, you talked about the business at hand. I too would agree that 600,000 men and women woke up this morning without a job in Ontario; 300,000 of those men and women used to work in manufacturing in Ontario. I believe, as many of us in Ontario believe, that this energy file in Ontario has been so badly mismanaged—

**Ms. Hazel McCallion:** The what?

**Mr. Victor Fedeli:** The energy file in Ontario has been so badly mismanaged that it has caused our energy bills to double in the last nine years, and I put that doubling of the energy bills in Ontario as one of the many reasons why 300,000 men and women no longer work in manufacturing. So I share your concern about getting to the business at hand, and I guarantee you that while we are sitting in this room—if you look up at the television behind you, you'll see that the legislators are in the Legislature this morning carrying on the business. When we're done here after this hour and a half, we'll be in Queen's Park in the Legislature, again, continuing carrying on the business.

Today, in fact, there are many bills that are coming from the PC Party that are designed to continue to push for Ontario to get back on a path to prosperity. While this has been going on, and while the Liberal government prorogued for those many months that we couldn't get the business back at hand, we have been writing our Paths to Prosperity, bold ideas from the PC Party. There are 13 of them out now that have great ideas. I assure you, Your Worship, that while this is going on, at least from the PC Party, the business at hand is of the utmost importance.

We believe that our Paths to Prosperity will help those 600,000 men and women who woke up this morning without a job get back to work. I want to you assure you that—

**Ms. Hazel McCallion:** Well, that's very good, but I've got to tell you, getting those 600,000 back to work, very little will be done by the government. It has to be done by the private sector—

**Mr. Victor Fedeli:** Hear, hear.

**Ms. Hazel McCallion:** Quite honestly, with the infrastructure in this area that is lacking—not just the transit, but infrastructure, etc., could put a lot of people back to work if the federal government—and I hope the an-



nouncement today is bringing money to the GTA. But remember, we're in global competition—

**Mr. Victor Fedeli:** I absolutely agree.

**Ms. Hazel McCallion:** So no matter what the government does—you can plow money and give it to the private sector. They're not going to hire people if they have no work. We have a problem, that we are a manufacturing province. Our biggest customer, the United States, is in trouble, and we're not exporting the way we should to other parts of the world. I don't know what really the government can do.

You folks should be challenging the private sector, because they're restructuring. As they restructure to become more efficient and economically sound, they're laying off people.

**Mr. Victor Fedeli:** Would you consider affordable energy rates and lower corporate taxes as a couple of incentives that a government could do to help spur business on in Ontario?

**Ms. Hazel McCallion:** The energy rates are not the problem.

**Mr. Victor Fedeli:** You don't believe that? You don't think so?

**Ms. Hazel McCallion:** No. I don't think they're the problem at all.

**Mr. Victor Fedeli:** You know they have doubled in the last nine years.

**Ms. Hazel McCallion:** Yes. They're not the problem with the private sector; they're not the problem. They may be with the individual who owns a home, but not with the private sector.

**Mr. Victor Fedeli:** So for those 600,000 who are unemployed, you would be concerned that the doubling of their energy rates is a problem?

**Ms. Hazel McCallion:** Well, you folks—I'm hoping today that the federal government will challenge the private sector. They haven't used technology to advance the manufacturing in this province. They've allowed other countries to get ahead of them in technology etc. In my opinion, a lot of the problems that we're facing in regard to unemployment are because of the private sector not responding the way that they should to the situation. As they restructure—read the paper every morning; there are companies laying off 300, 500—they find out that they didn't need as many more people as they thought they did.

**Mr. Victor Fedeli:** Well, you and I absolutely agree on that and on many things, and—

**Ms. Hazel McCallion:** I never found government resolved any unemployment situation other than to hand out more money.

**Mr. Victor Fedeli:** As we like to say, we don't like picking winners and losers either, Your Worship. We believe that governments don't create jobs; companies create jobs, so we agree on that. We're very concerned and believe that it's our role to create the atmosphere and the institution for those businesses to succeed, like lower corporate taxes and affordable energy rates. Those are

two things in our opinion that will help these 600,000 men and women.

**Ms. Hazel McCallion:** Let's put it this way: If the government started to do what the private sector is doing, they would add greatly to the unemployment in this province. Become more efficient and better managed with fewer staff; they would be adding to the unemployment.

**Mr. Victor Fedeli:** Thank you very much. Mayor McCallion, do you have—we've got how much time left?

**The Chair (Mr. Shafiq Qaadri):** Three minutes.

**Mr. Victor Fedeli:** Three minutes. Do you have anything else that you want to add in terms of—

*Interjection.*

**Mr. Victor Fedeli:** I'm sorry? I missed that.

**The Chair (Mr. Shafiq Qaadri):** Please go ahead.

**Mr. Victor Fedeli:** Sorry, I thought there was something coming from over there.

Do you have anything else that you want to add about the process that has been taken with this gas plant? Do you have any final philosophy or any final words that we can share?

**Ms. Hazel McCallion:** Well, my final thing is, I don't think the issue of gas plants has been settled. One of the biggest problems in this province is the distribution system, and it's not being addressed. That's why they're trying to locate gas plants all over the place. It's to offset the unfortunately depreciated transmission lines in the province. I think this whole energy issue should be looked at.

Secondly, in regard to the privatization of the hydro utilities, which the Conservative government brought in, in my opinion, it is not working. In fact, it's costing an increase in the cost of hydro, the privatization, because the energy board, which is now regulating everything, is very inexperienced in regards to hydro. It seems they've been able to manage or regulate the gas business. When it comes to hydro, it's all over the map. So there are major problems, there's no question about it, in regards to the energy.

I know your government—are you NDP?

**Mr. Victor Fedeli:** No, I proudly sit as—

*Laughter.*

**Mr. Victor Fedeli:** We will be the PC government.

**The Chair (Mr. Shafiq Qaadri):** Not yet, Mayor McCallion.

**Ms. Hazel McCallion:** By the way, I have great respect for Ms. Horwath, because I think women will really solve some of the problems at Queen's Park. All you folks have to do is elect a woman.

**Mr. Victor Fedeli:** My wife would tend to agree with you. I thank you very much. I'll yield my time over.

**Ms. Hazel McCallion:** Let me put it this way: Horwath has been recommending a public enquiry on this gas plant. All a public enquiry does is put a lot of money in the hands of the legal profession and it attains nothing. We've gone through it in Mississauga on an enquiry: \$7.5 million. And what did it attain? Zero.



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**The Chair (Mr. Shafiq Qaadri):** Thirty seconds.

**Mr. Victor Fedeli:** Thank you very much. I do acknowledge what you're saying, and I know my wife would agree with you on many of those finer points.

I guess, Mayor, at the end of the day, what we're really after is the fact that there were documents that were covered up, and we're looking to get to the bottom of the cover-up. I think that's the real important part, Your Worship.

**Ms. Hazel McCallion:** And who's going to read all the documents?

**Mr. Victor Fedeli:** Well, I can tell you I've read many of the 56,000 myself—

**Ms. Hazel McCallion:** Well, you mustn't have much to do, then.

*Laughter.*

**Ms. Hazel McCallion:** Come on out to Mississauga and we'll put you to work.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli. Mayor McCallion, I now pass the floor to the real NDP, Mr. Tabuns.

**Mr. Peter Tabuns:** Mayor McCallion, clearly we should have you in testifying every week. It makes a big difference here.

Getting back to the business of this plant, when you first heard about this proposal, you tried to talk to Minister Duncan, and effectively he told you that it was a done deal: "We've signed a contract. It's over." Is that fair to say?

**Ms. Hazel McCallion:** Is that what he said?

**Mr. Peter Tabuns:** Yes. Is that—what did he say?

**Ms. Hazel McCallion:** No, he was very supportive—a decision unfortunately had been made.

**Mr. Peter Tabuns:** So he said, "Nothing can be done. A decision has been made."

**Ms. Hazel McCallion:** And my question and his was, "How do we get rid of it?" He was very supportive.

**Mr. Peter Tabuns:** Did he ever take any action to get rid of it that you're aware of?

**Ms. Hazel McCallion:** Pardon?

**Mr. Peter Tabuns:** Did he ever take any action to get rid of this contract that you are aware of?

**Ms. Hazel McCallion:** Well, first of all, the financing was the question at the time. They didn't have the finances. The responsibility for processing it became our responsibility in regard to building it. So, really, the responsibility sort of shifted to us as to whether we could find just cause for cancelling it, from a planning, land use point of view, etc. The responsibility shifted to us, and we went through the process very thoroughly.

We asked for it to be bumped up for an additional assessment. That was turned down, I believe, by the Minister of the Environment. They didn't feel that our request for bumping it up to a full environmental assessment was necessary.

**Mr. Peter Tabuns:** And did you challenge them on that?

**Ms. Hazel McCallion:** Well, how can you challenge the province? The only thing I would do is get rid of them. The provincial government has—oh, I'm not going to say it.

We are no longer children of the province. We manage our affairs much better than the province does. The time has come that we'd better be recognized as a level of government, and the same rules should apply to us. In other words, we can't move into camera like you folks can and have all our cabinet discussions privately. Oh, we have to clearly state, "Move into camera. Do this, this, this and this," like a bunch of children. You folks and the federal government can operate completely in camera with no public, no press or anything. Isn't that interesting? Yet we are a qualified level of government. It's time that the province and all parties in the province recognized us as a responsible level of government, where the action is and where everything from an economic point of view is taking place.

What happens at Queen's Park? As I explain, in Toronto, there's three zoos. There's the real one, right now at city hall there's another one, and then there's one at Queen's Park.

I mean, folks, the people are getting fed up—and I've been in politics for a long time—with this wrangling that is going on amongst parties etc. and not getting the job done for the 800,000 unemployed in the province. My message to you is, get on with the business. No matter what this plant costs, it's going to cost you a lot of money. It isn't important whether it's \$800 million or \$1 billion; it's going to be somewhere in there. So let's get on with the business of the Legislature.

**Mr. Peter Tabuns:** Can I go back to your city's efforts once Dwight Duncan effectively said, "The ball's in your court. If you're going to stop this, you're going to have to stop it." You tried to get a bump-up to a full environmental assessment. When was that denied?

**Ms. Hazel McCallion:** We can give you the date.

**Mr. Peter Tabuns:** If you wouldn't mind.

**Ms. Hazel McCallion:** Oh, here it is: environmental screening and review for Greenfield South, September 19—a letter to the Ministry of the Environment forwarding council resolution requesting the Greenfield South environmental review be elevated to an individual site environmental assessment. That was refused.

**Mr. Peter Tabuns:** And the date on the refusal, again, was?

**Ms. Hazel McCallion:** No, we don't have the data. We'd be glad to supply it to you.

**Mr. Peter Tabuns:** If you wouldn't mind.

**Ms. Hazel McCallion:** Sure.

**Mr. Peter Tabuns:** We appreciate that offer.

And then you and your council decided to act through your planning powers to deal with this problem. Can you tell us about how you tried to rezone the site, or if you didn't act to rezone, how you tried to interpret the zoning to ensure that a power plant couldn't be built here?

**Ms. Hazel McCallion:** Well, I think Ed Sajecki should respond to that as a planner.



**The Chair (Mr. Shafiq Qaadri):** I'm sorry; I'm going to need to intervene there. You're not a summoned witness.

**Ms. Hazel McCallion:** "City Amends OP and Zoning Bylaws: City council adopted official plan amendment 48, which modified power generation terminology in the Mississauga official plan to achieve wording consistency and to add definitions. In addition, zoning bylaw amendments were passed, which brought the industrial zone categories in conformity with the corresponding official plan designation." That was March 2006.

**Mr. Peter Tabuns:** So 2006. I'm assuming that the power developer appealed this to the Ontario Municipal Board.

**Ms. Hazel McCallion:** Yes, it did. They appealed it April 4, 2006, and it went to the municipal board.

**Mr. Peter Tabuns:** And when was it dealt with?

**Ms. Hazel McCallion:** The OMB hearing was July 2007, and on October 4, 2007, an OMB order was issued regarding the July hearing approving the development, subject to minor modifications, notwithstanding the city's objection. Municipalities now have concern about OMB decisions.

**Mr. Peter Tabuns:** Did you ever think to appeal their decision to a higher court?

**Ms. Hazel McCallion:** We asked staff to tell us how we could appeal it, and as you know, to go to the Divisional Court, you have to have a technicality, not because you disagree with the decision based on land use etc. It has got to be a legal technicality.

**Mr. Peter Tabuns:** So effectively, Dwight Duncan, in your conversation with him years earlier, said, "It's out of our hands. We've signed this contract. Good luck trying to stop it." And you in fact tried, on two accounts, to stop this plant from going forward, but you were blocked in both cases.

**Ms. Hazel McCallion:** Yes.

**Mr. Peter Tabuns:** You have the Lakeview site in your riding.

**Ms. Hazel McCallion:** The what?

**Mr. Peter Tabuns:** The Lakeview generating station site is in your city. No power plant was proposed for that or ever built. Why was that site not used?

**Ms. Hazel McCallion:** The Lakeview site?

**Mr. Peter Tabuns:** Yes.

**Ms. Hazel McCallion:** Well, as I mentioned to the previous question, OPG was interested in locating a gas generation plant there. They worked with Enersource to involve them in the process, and Mr. Smitherman came out to Mississauga one morning, held a press conference on the site and announced that there would be no gas generation plant on that site.

**Mr. Peter Tabuns:** And do you know why he made that announcement?

**Ms. Hazel McCallion:** Well, quite honestly, the citizens were supportive of that because they had lived with this coal generation plant for years that certainly emitted a lot of pollution—I'm not sure that much on the city of Mississauga, but certainly on the United States, because

it was blowing across the lake etc. But they were tired of the fact that they had a plant there for all these years. I wouldn't say it was unanimous, because some of the people who had worked at that plant for years had felt it was a great economic asset to the area. But he, at the request—I guess Charles Sousa would have more information on how he had worked with the citizens to not have a gas generation plant on that site.

**Mr. Peter Tabuns:** So the site was blocked by the provincial government, not by the city of Mississauga.

**The Chair (Mr. Shafiq Qaadri):** Thank you Mr. Tabuns. I need to intervene there.

First of all, before thanking Mayor McCallion, as there was a request, the gentleman and lady who are accompanying Mayor McCallion are Ed Sajecki, commissioner of planning and building, and Mary Ellen Bend, city solicitor, city of Mississauga.

Mayor McCallion, I'd like to thank you collectively on behalf of not only the province but of course the justice policy committee for your time, your expertise and your energy. Thank you very much, Mayor McCallion.

Mr. Leone?

**Mr. Rob Leone:** Mr. Chair, I would like to put forward a motion, under consultation with the Clerk's office, to present a motion for further documentation. Can I present that motion?

**The Chair (Mr. Shafiq Qaadri):** Please read it into the record.

**Mr. Rob Leone:** Mr. Chair, I move that the Standing Committee on Justice Policy request that the secretary of cabinet produce, by 11 a.m. on April 3, 2013, the following:

(1) List of names, titles and roles of all political staff in the Premier's office (past or present), the Office of the Minister of Finance (past or present), and the Office of the Minister of Energy (past or present), who were involved with or had knowledge of the tendering, planning, commissioning, cancellation, and/or relocation of the Mississauga and/or Oakville gas plant;

(2) A list of the names of all ministers past or present in attendance during any and all cabinet meetings or cabinet committee meetings where either the Oakville or Mississauga gas plants were discussed, or where ministers were briefed, provided documents and/or where decisions were rendered regarding the tendering, planning, commissioning, cancellation, and relocation of the Mississauga and/or Oakville gas plants;

(3) All documents, correspondence, emails, attachments, missives, notes, or any communications without redaction ordered under the scope of the original document production order as issued by the Standing Committee on Estimates on May 16, 2012, and that it be expanded to include all documents, including those hidden or covered by a code name, regardless of status or privilege from the Office of the Premier, the Cabinet Office, Ministry of Finance and/or the Office of the Minister of Finance, Infrastructure Ontario, and the Ontario Electricity Financial Corporation without redaction

or any alteration related to the tendering, planning, commissioning, cancellation, and/or relocation of the Mississauga and/or Oakville gas plant; and,

(4) That four sets of the above documents be printed in paper form and delivered to the Clerk of the Standing Committee on Justice Policy for distribution to each member of the subcommittee;

(5) All documents in this motion be provided in searchable electronic format.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Leone. I am pleased to advise the committee that this motion is duly in order and therefore tabled before the committee. The floor is open for debate and comments before taking the vote on this motion.

**Mrs. Donna H. Cansfield:** Can we have a brief recess on this motion?

**The Chair (Mr. Shafiq Qaadri):** I will accept a recess, if that's agreeable. That's fine. So five, 10 minutes?

**Mrs. Donna H. Cansfield:** Yes.

**The Chair (Mr. Shafiq Qaadri):** All right, so let's call it a recess for 10 or 15 minutes or so.

*The committee recessed from 1014 to 1026.*

**The Chair (Mr. Shafiq Qaadri):** Thank you, colleagues. The committee is back in session. As you know, we have a motion, duly in order, presented by Mr. Leone. You've all had time to consider it. The floor is open for debate or comments. Maybe the floor to the NDP, if they have any issues or comments?

*Interjection.*

**The Chair (Mr. Shafiq Qaadri):** All right.

Yes, Ms. Cansfield?

**Mrs. Donna H. Cansfield:** I just have a couple of questions. One is around—first and foremost, you can have all the documents; that's not an issue. It's about who can provide those. I actually don't think the secretary of cabinet has the authority to direct the ministers. I think you actually have to say that the ministers direct—just to make it clear. I don't think the secretary of cabinet has the authority to tell the ministers what to do. We can double-check that, but I'm pretty sure. That's one, and that's just to clean up the little whatever.

The third is really a clarification around the timelines. Again, we're more than prepared to give all the documents, but if we could have some idea around the time frame for number 3? Are you talking from—when to when? There's an original motion, if you recall, on the floor. Is it within that same time frame or is it different—that sort of thing? That's the beginning of some of the

discussion, just so that we know and whoever is looking for those documents knows the time frame.

**The Chair (Mr. Shafiq Qaadri):** Okay. Any further comments on this particular motion?

**Mr. Rob Leone:** Chair, I'm sorry. The time frame for when they should be providing the documents?

**Mr. Steven Del Duca:** No, it's the window of the search.

**Mrs. Donna H. Cansfield:** The window of the search. Are you looking from 1999 to 2014? Are you looking from your original motion, which I think had—I can't remember.

**Mr. Steven Del Duca:** I think it had dates.

**Mrs. Donna H. Cansfield:** It actually had dates attached to it, because this helps in terms of the search and what you're looking for and the documents. Obviously, the longer the search, the more time you're going to need. If it's from 1999—

**Mr. Rob Leone:** Well, we—can I respond, Mr. Chair?

**The Chair (Mr. Shafiq Qaadri):** Yes, please.

**Mr. Rob Leone:** We were under the impression, given the Premier's comments, that these documents were available for production—related to the gas plants and the relocation of the gas plants. So that's—

**The Chair (Mr. Shafiq Qaadri):** I just advise—procedurally, Ms. Cansfield does bring up a good point, because, for example, if this request is not within the purview of the secretary of cabinet, he will simply write back to you saying that, and that will just delay the implementation of the motion. Similarly, if they are also confused or not having specific details of the dates, they will simply write back to you and once again delay the process. So these are both valid issues.

**Mr. Rob Leone:** Can I just interject?

**The Chair (Mr. Shafiq Qaadri):** Please.

**Mr. Rob Leone:** Would it be possible to defer this to our next meeting so we can actually make that clarification?

**Mrs. Donna H. Cansfield:** Yes, absolutely. It would just help us in terms of that time frame and make it—

**The Chair (Mr. Shafiq Qaadri):** That's fine. Defer it until the next meeting, and you can re-present with some added details.

Is that the will of the committee? Unanimous consent on that?

The committee is adjourned until Tuesday, 8:30 a.m., next week.

*The committee adjourned at 1030.*





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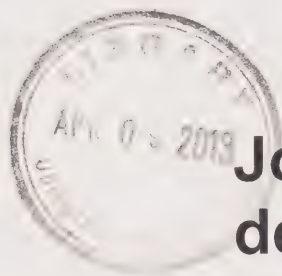
Deuxième session, 40<sup>e</sup> législature

**Official Report  
of Debates  
(Hansard)**

Tuesday 26 March 2013

**Standing Committee on  
Justice Policy**

Members' privileges



**Journal  
des débats  
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Mardi 26 mars 2013

**Comité permanent  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE POLICYCOMITÉ PERMANENT  
DE LA JUSTICE

Tuesday 26 March 2013

Mardi 26 mars 2013

*The committee met at 0831 in room 151.*

## MEMBERS' PRIVILEGES

**Le Président (M. Shafiq Qaadri):** Chers collègues, bonjour et bienvenue à tous, particulièrement mes collègues. Mesdames et messieurs, j'appelle à l'ordre cette séance du Comité permanent de la justice.

As you know, we're continuing our hearings with reference to the agenda regarding the gas plants.

## MS. TIFFANY TURNBULL

**The Chair (Mr. Shafiq Qaadri):** If there's no business before the committee, I'd invite our first witness, Ms. Tiffany Turnbull, to please come forward.

As you've no doubt seen, you'll be invited to be affirmed, kind of our swearing-in version, and I'd invite the Clerk to administer that now.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Do you solemnly affirm that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth?

**Ms. Tiffany Turnbull:** I do.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Ms. Turnbull. You have five minutes in which to make opening remarks and then rotation by the various parties. I'd invite you, please, to begin now.

If you might just aim that microphone a bit more, yes. Thank you. Please begin.

**Ms. Tiffany Turnbull:** Good morning. My name is Tiffany Turnbull. I'm currently the manager of evaluation and renewal at the Workplace Safety and Insurance Board, a position I assumed on July 23, 2012. Prior to that, I was the executive assistant to Giles Gherson, Deputy Minister of Policy and Delivery in Cabinet Office. I assume it was in this capacity that I've been called to appear before the committee.

Although I'm happy to co-operate with the committee to the best of my ability, I wish to confirm in advance that I was not directly involved in any of the issues being considered by this committee and have no substantive knowledge or recollection of those issues. As a courtesy to the committee, I did advise the Clerk of my lack of involvement or knowledge in these issues when I was contacted to appear.

As the executive assistant to Giles Gherson, my primary role was to support him as the Deputy Minister of Policy and Delivery in Cabinet Office. Although I would often be involved in, or have knowledge of, certain matters being managed by or reported to the deputy minister, there were other files where we worked fairly independently. This was the case with the Oakville and Mississauga transactions, and I was not involved in any substantive aspects of those files.

Although I was aware that Deputy Gherson was involved in those transactions, to the best of my recollection, his primary interactions were with a small number of deputy ministers and members of the Premier's office. I did not attend any meetings or sit in on any teleconferences on these transactions, nor did the deputy discuss any matters connected to these transaction with me.

I do recall occasions when I was copied or sent emails related to these files, but I have no specific recollection of their contents. These emails would have been among a high volume of daily emails on any number of items each day. To the best of my recollection, I would have been copied on those files simply to ensure that that information was brought to the attention of the deputy.

Finally, I wish to confirm that I had no knowledge of the Ministry of Energy document disclosure issues being considered by the committee. I am of course aware of those issues through various media reports, but because those issues would not have come to the attention of the policy area of Cabinet Office, I had no reason or occasion to be directly involved in those matters.

With that, I would be pleased to answer your questions.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Ms. Turnbull. We'll begin with the PC side, Mr. Fedeli. Twenty minutes.

**Mr. Victor Fedeli:** Thank you very much. I was trying to make a couple of notes during your opening remarks. How long were you in the Cabinet Office?

**Ms. Tiffany Turnbull:** Approximately five years total, and three of those years would have been within the deputy minister's office.

**Mr. Victor Fedeli:** And how often would you have dealt with energy ministry items?

**Ms. Tiffany Turnbull:** Relatively rarely. In my role, it was largely to assist with the flow of information that was making its way through cabinet committees towards

cabinet decision-making. So we would see items as they would have come through in a full cabinet submission format, generally.

**Mr. Victor Fedeli:** I have a hard time hearing you. Could you repeat that? I'm sorry.

**Ms. Tiffany Turnbull:** Yes. I would have had rare interaction with those, other than items that may have tracked officially through the cabinet decision-making process, which would have involved potentially coming to committee and then to cabinet for a decision.

**Mr. Victor Fedeli:** So you said—I started to write down your first answer—"the flow of information into the Cabinet Office." What did you do with the flow? You controlled the flow? You handled the flow? I just missed that part.

**Ms. Tiffany Turnbull:** My role as the executive assistant would be to assist with coordination of items that would be coming through for decision-making. Of course, we have staff whose jobs are full-time to assist ministries, and an executive council office who would be responsible for the machinery of government elements of that. But my role would be essentially to assist where the deputy needed to be involved in something or scheduling meetings to assist with items that needed some kind of resolution as they were moving forward. It was really just to support him and any coordination that was required.

**Mr. Victor Fedeli:** Okay. So who in the Cabinet Office would you have worked with when anything to do with the Oakville or Mississauga gas plant cancellations came up?

**Ms. Tiffany Turnbull:** In my role, I had very little interaction with those files at all. Our deputy was very peripherally, if at all, involved, until, to the best of my recollection, following the election, when the Mississauga commitment was beginning its implementation. At that time, the extent of my role was really to assist with organizing meetings on his behalf.

**Mr. Victor Fedeli:** And you worked directly for Mr. Gherson?

**Ms. Tiffany Turnbull:** That's correct.

**Mr. Victor Fedeli:** And his title, again, at that time?

**Ms. Tiffany Turnbull:** He was the Deputy Minister of Policy and Delivery in Cabinet Office.

**Mr. Victor Fedeli:** Who in the cabinet or in the Premier's office would you have had any contact with, other than Mr. Gherson, with respect to the gas plant cancellation?

**Ms. Tiffany Turnbull:** Personally, I didn't have any. There were a number of semi-regular meetings that would have involved a small number of deputies and, on occasion, Chris Morley.

**Mr. Victor Fedeli:** Other than Chris Morley, at these semi-regular meetings that involved those people, who would those people have been?

**Ms. Tiffany Turnbull:** Who would the deputies have been that were involved? To the best of my recollection, David Lindsay, at that time, when he was Deputy Minister of Energy; likely Peter Wallace in his then role as Deputy Minister of Finance; and there may have been

occasions where the then secretary of cabinet had been involved in those meetings. But I don't think that would have been a regular occurrence.

**Mr. Victor Fedeli:** When did you first hear—hear or see, actually—the words "Project Vapour"?

**Ms. Tiffany Turnbull:** I can't recall an actual date. I had awareness of that project in relation to Oakville and that term being used in relation to it. But that initial project, we had essentially no involvement in at all.

**Mr. Victor Fedeli:** You were familiar with the words "Project Vapour" before the media launch or the media announcement of several months ago?

**Ms. Tiffany Turnbull:** Yes.

**Mr. Victor Fedeli:** How long ago do you figure? Just a rough idea. I'm not going to hold you to any date here.

**Ms. Tiffany Turnbull:** It could have been spring/summer 2011.

**Mr. Victor Fedeli:** Sometime in 2011, though.

**Ms. Tiffany Turnbull:** Yes.

**Mr. Victor Fedeli:** What do you recall about Project Vapour?

**Ms. Tiffany Turnbull:** Prior to reading the secretary of cabinet's transcript from his appearance here last week, I knew very little, other than it was a public service supporting government decision-making, which is sort of our normal role. So it would have been to provide advice around implementation and to assist, where required, with negotiations.

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**Mr. Victor Fedeli:** But you knew Project Vapour was Oakville?

**Ms. Tiffany Turnbull:** At the time, it wasn't apparent to me. I think that's sort of later. After the Mississauga issue came up, it became more clear. As I say, I had essentially no involvement at that time.

**Mr. Victor Fedeli:** There's a document from November 21, 2011. I could share that document, Chair. It's from you to Colin Andersen. It says, "PO is asking us to get a copy of the paper (agreement) from the Vapour file" as soon as possible.

Who would PO have been? The document is there in front of you.

**Ms. Tiffany Turnbull:** Sorry; just give me one moment.

**Mr. Victor Fedeli:** Yes. It's on the last page. Your name is here; there are one, two, three—four different emails with your name. This is directly to you. The "to" line is directly to you, not a copy to you. This is you with this document.

**Ms. Tiffany Turnbull:** Yes, I do recall this email. If I recall correctly, it would have been that the deputy was engaged in some other meeting and asked me to request this on his behalf.

**Mr. Victor Fedeli:** So who would PO have been?

**Ms. Tiffany Turnbull:** I don't know, actually. They would have asked Giles for it and he would have asked me to procure the document.

**Mr. Victor Fedeli:** So is this the first time you heard the word "Vapour"?



**Ms. Tiffany Turnbull:** No, I think I would have heard it earlier in the year. As you said, this was from November.

**Mr. Victor Fedeli:** That's right. You mentioned you might have heard it in the spring.

So if this document here on Vapour is not the first time you heard it, and you think you heard it in the spring, what was the context, do you think? Was it at a meeting? Was it at a cabinet session? Was it something you were corresponding about? Could you recall the first time that you heard the word "Vapour"?

**Ms. Tiffany Turnbull:** It wouldn't have been in any meetings because I didn't attend any related to this, and it wouldn't have been in relation to cabinet because I don't attend cabinet. It likely would have been just someone mentioning it to the deputy in his office or possibly an email. There are a number of offices in our pod; there could have been a conversation going on. It wasn't in any official capacity that I was necessarily asked to do anything other than something along these lines, where I would have simply been coordinating on behalf of the deputy.

**Mr. Victor Fedeli:** Did you know that Vapour was Oakville the first time you heard it?

**Ms. Tiffany Turnbull:** No.

**Mr. Victor Fedeli:** To the best of your recollection—I'm just trying to figure it out—how did you tie that bow? How did you figure out that Oakville was referring to Vapour?

**Ms. Tiffany Turnbull:** It would have been probably later, after the election, when we began work on Mississauga, that the deputy had slightly more involvement. I may have been given a slight bit of information then just to assist him with setting up meetings.

**Mr. Victor Fedeli:** But you had first heard it back in the spring of 2011.

**Ms. Tiffany Turnbull:** Yes. It was likely in informal conversation or, you know, just in passing. But I had no role, so there was no need for me to be explained anything about what the item was.

**Mr. Victor Fedeli:** The first time you heard the expression "Project Vapour-lock": When was that?

**Ms. Tiffany Turnbull:** I suspect it would have been after the election because the commitment had been made just shortly before October 6 and we had been asked to assist with coordinating meetings out of Cabinet Office to facilitate the implementation of this government commitment.

**Mr. Victor Fedeli:** Who would have asked you to do that?

**Ms. Tiffany Turnbull:** The deputy.

**Mr. Victor Fedeli:** The name, I'm sorry?

**Ms. Tiffany Turnbull:** Giles Gherson.

**Mr. Victor Fedeli:** So, your boss?

**Ms. Tiffany Turnbull:** Yes.

**Mr. Victor Fedeli:** When did you first acknowledge in your mind that Vapour-lock was the Mississauga gas plant?

**Ms. Tiffany Turnbull:** It would have been sometime that fall, while we were supporting these meetings.

**Mr. Victor Fedeli:** And how would that have come up? In what context would Vapour-lock have come up?

**Ms. Tiffany Turnbull:** Likely the deputy would have told me that that's what those meetings were for and that it was in relation to Mississauga. It would have been probably very straightforward.

**Mr. Victor Fedeli:** So you think that you first heard "Vapour-lock" sometime in the fall of 2011?

**Ms. Tiffany Turnbull:** That sounds correct, yes.

**Mr. Victor Fedeli:** And when is the—actually, I want to go back to that. You were asked to facilitate—your office was asked to facilitate—the implementation of Project Vapour-lock. Is that what it was?

**Ms. Tiffany Turnbull:** Not the actual implementation, but facilitate meetings that were aimed at beginning the implementation discussions.

**Mr. Victor Fedeli:** Would you know the names of any people at those meetings that you would have been asked to facilitate?

**Ms. Tiffany Turnbull:** Yes. Deputy Gherson would have been generally chairing those, or at least doing sort of the pulling together of the meetings. My understanding is that David Lindsay would have attended those meetings as deputy of energy. It's possible that Peter Wallace would have been in attendance. I would suspect that there were other ministries involved, but I honestly can't recall which ones.

**Mr. Victor Fedeli:** So we'll move on to Project Apple. What was the first time, the first date, that you heard of Project Apple?

**Ms. Tiffany Turnbull:** Actually, just this very minute.

**Mr. Victor Fedeli:** That's fair. And what about Project Banana?

**Ms. Tiffany Turnbull:** No, I haven't heard that. Sorry.

**Mr. Victor Fedeli:** Project Fruit Salad?

**Mr. Rob Leone:** We're not making this up.

**Mr. Victor Fedeli:** I'm not making this up.

**Ms. Tiffany Turnbull:** No, I'm not aware of any of those.

**Mr. Victor Fedeli:** Okay. But you are aware of Project Vapour and Project Vapour-lock?

**Ms. Tiffany Turnbull:** Yes.

**Mr. Victor Fedeli:** Okay. Did you work on any cabinet documents—did you prepare any cabinet documents on Project Vapour?

**Ms. Tiffany Turnbull:** No. And that's normal. My role wasn't related to production of documents.

**Mr. Victor Fedeli:** Okay. Again, I want to go back to that email that I just handed you. What do you think "PO"—you're asking this, by the way. It's not somebody asking.

**Ms. Tiffany Turnbull:** No, I know. Yes.

**Mr. Victor Fedeli:** This is from you to Colin Andersen: "PO is asking us to get a copy.... Is it possible

someone could send to me?" So when you got it, what would you have done with that document then?

**Ms. Tiffany Turnbull:** I would have provided it to the deputy, and he would have then provided it to whoever had requested it.

**Mr. Victor Fedeli:** Do you recall getting the document?

**Ms. Tiffany Turnbull:** I don't, actually.

**Mr. Victor Fedeli:** Okay.

**Ms. Tiffany Turnbull:** I suspect that we did, but I can't say for certain.

**Mr. Victor Fedeli:** Can you find out? Is there any method in determining whether you received that file and did something with it? Is there any way?

**Ms. Tiffany Turnbull:** My understanding is that there would have to be a motion of the committee. I no longer work for the Ontario public service, so I don't have access to any records.

**Mr. Victor Fedeli:** Okay; it's a fair answer. It's fair enough.

There's another document. I'm going to hand it out as well, to the Clerk. We're going to give one to each of our guys and one to Ms. Turnbull. This is from Jason Collins at energy. Do you know who Jason Collins at energy is or was?

**Ms. Tiffany Turnbull:** I don't know what his role would have been, no.

**Mr. Victor Fedeli:** Again, this is to you. This isn't a copy to you; this is directed to you. It says, "Hi Tiffany," and there's someone else named here from the cabinet: Steen Hume.

**Ms. Tiffany Turnbull:** Yes.

**Mr. Victor Fedeli:** Do you know who he is?

**Ms. Tiffany Turnbull:** Yes, I do.

**Mr. Victor Fedeli:** And who is he?

**Ms. Tiffany Turnbull:** He's the executive assistant to the secretary of cabinet.

**Mr. Victor Fedeli:** Okay. So it says, "Hi Tiffany and Steen—please find attached Proceedings Against the Crown Act notice, received by MAG yesterday. MAG, including CLOC, the ADAG's office and MOF legal are fully looped in." These are all acronyms for other ministries and such.

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"There isn't much we can do at this stage," etc.

Can you recall why he sent this document specifically to you? This would be just a couple of days before Christmas, the 23rd of December, 2011.

**Ms. Tiffany Turnbull:** No, I can't recall if it was something that we requested or something that they were simply sharing. It wouldn't be unusual for someone in the deputy's office—it says that Jason's acting for Joseph Silva, who at the time would have been the deputy's EA. So we would have had regular contact on other items—

**Mr. Victor Fedeli:** That I can see. You're named in a considerable amount of regular documents here. Sometimes you're copied, but sometimes you are either the initiator of them or they are directed specifically to you. You don't recall this particular one?

**Ms. Tiffany Turnbull:** I vaguely recall receiving this email, but I would have simply provided it to the deputy.

**Mr. Victor Fedeli:** In the many emails that you're named in in the 56,000 documents, there are many chains of emails as well. Mr. Andersen tells you that you can get an agreement from—and I don't know how I'm going to pronounce her name right, but I'll try—Halyna Perun. Do you know who that person is? It's H-A-L-Y-N-A P-E-R-U-N.

**Ms. Tiffany Turnbull:** I do recall the name. I believe she was a legal counsel that was assisting with some of these files. So it may have been that if Colin was engaged otherwise, he may have directed me to herd or request materials.

**Mr. Victor Fedeli:** The email chain shows that you've spoken with the Deputy Minister of Energy office regarding details of that unsigned agreement. Do you call who you spoke with at that ministry office?

**Ms. Tiffany Turnbull:** My usual contact would have been the deputy's EA. That's sort of normal process.

**Mr. Victor Fedeli:** Do you know the name?

**Ms. Tiffany Turnbull:** At the time, it would have been Joseph Silva.

**Mr. Victor Fedeli:** Did you liaise with anyone else on the power plant file?

**Ms. Tiffany Turnbull:** Not that I can recall.

**Mr. Victor Fedeli:** You're also copied on an email on October 27 regarding a Mississauga News article on the power plant cancellation. Do you know why it was important that you particularly be copied on that email?

**Ms. Tiffany Turnbull:** That was likely just to ensure that Deputy Gherson was aware of the coverage.

**Mr. Victor Fedeli:** Okay. There's a ministry spokesperson quoted in the article, Andrew Block: Do you know who that person is?

**Ms. Tiffany Turnbull:** No.

**Mr. Victor Fedeli:** You never had any contact? Do you have emails with Andrew Block?

**Ms. Tiffany Turnbull:** Not that I recall. He likely would have been a communications staffer, so we would have not normally had a need to interact.

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Victor Fedeli:** Who's Petra Fisher? That's another name that shows up on the emails often.

**Ms. Tiffany Turnbull:** It sounds vaguely familiar, but I can't recall what position Petra would have had.

**Mr. Victor Fedeli:** Another email chain, a lengthy one on November 9, deals with messaging on Oakville. Again, why would you have been copied into that correspondence?

**Ms. Tiffany Turnbull:** It would be the same reason: just to ensure that the deputy was aware.

**Mr. Victor Fedeli:** Okay. When we come back, Chair, I'll get into a slide deck then.

**The Chair (Mr. Shafiq Qaadri):** Thank you, then, Mr. Fedeli.

To the NDP side and Mr. Tabuns. Twenty minutes.

**Mr. Peter Tabuns:** Thank you, Mr. Chair.

Good morning. Thank you for being here today.



**Ms. Tiffany Turnbull:** Good morning.

**Mr. Peter Tabuns:** Do you have any knowledge of why the Premier's office was taking a specific interest in these files, Oakville and Mississauga South?

**Ms. Tiffany Turnbull:** I can't speak to whether there was a specific interest. It would be normal procedure for staff from the Premier's office to be involved in policy decision-making.

**Mr. Peter Tabuns:** Was it normal, in your experience, for them to be involved with other power plants that had been contracted by the Ontario Power Authority?

**Ms. Tiffany Turnbull:** I have no knowledge of that.

**Mr. Peter Tabuns:** I'll put the question another way. You didn't see files about other power plants coming across your desk or through your computer?

**Ms. Tiffany Turnbull:** No.

**Mr. Peter Tabuns:** Fine. Can you describe the committee that dealt with this matter in the Premier's office, in the cabinet? You noted earlier a semi-regular meeting. Can you tell us who chaired the meeting and, again, the participants?

**Ms. Tiffany Turnbull:** So, yes. This would have been only in relation to the Mississauga file following the election, when our office was asked simply to coordinate meetings to facilitate these discussions. So to the best of my knowledge, given that our office was coordinating, it was likely that my deputy would have taken a chair role in those meetings, despite our ministry's lack of a substantive role. It would have included, certainly, the Ministry of Energy and likely the Ministry of Finance. It could have been that there were other ministries attending, but I honestly can't recall. I believe they were relatively small meetings, and they may have, on occasion, included staff from the Premier's office, but the only person I know of specifically would have been Chris Morley.

**Mr. Peter Tabuns:** So it would have been Chris Morley from the Premier's office, and from energy it would have been?

**Ms. Tiffany Turnbull:** Likely the deputy; it would have been David Lindsay. It's possible that there would have been ministers' office staff there, but I don't know.

**Mr. Peter Tabuns:** And you didn't have further information on that.

**Ms. Tiffany Turnbull:** No.

**Mr. Peter Tabuns:** And from finance?

**Ms. Tiffany Turnbull:** It likely would have been the deputy, who would have been Peter Wallace at the time.

**Mr. Peter Tabuns:** I'm sorry; repeat that name.

**Ms. Tiffany Turnbull:** Sorry. It likely would have been Peter Wallace at that time. He was the deputy at finance at that time.

**Mr. Peter Tabuns:** Other than Chris Morley, can you tell us who else in the Premier's office was working on these files?

**Ms. Tiffany Turnbull:** He's the only person I'm directly aware of.

**Mr. Peter Tabuns:** Were you ever given any directions on how to communicate around these files—for instance, that people were to get verbal briefings rather than written briefings?

**Ms. Tiffany Turnbull:** My understanding is that there may have been some guidance provided by Cabinet Office communications. That would be standard procedure. If there were documents of that nature, I would have simply provided them to the deputy.

**Mr. Peter Tabuns:** Do you have any recollection of the details in these documents setting out how to communicate?

**Ms. Tiffany Turnbull:** No, because my role wouldn't have involved any communication with the public or media, so I wouldn't have had any need to review them.

**Mr. Peter Tabuns:** I'm not talking so much about communications with the media or public; I'm talking about protocols for internal communication. Were there restrictions on what you were supposed to put in emails or not put in emails?

**Ms. Tiffany Turnbull:** It's possible, but I don't recall receiving any of those types of direction.

**Mr. Peter Tabuns:** Okay. You handled communications. You facilitated the flow of paper into Mr. Gherson's hands. Did you see a number of documents that had reference to Project Vapour?

**Ms. Tiffany Turnbull:** It seemed to me, in preparing for this, as I was thinking about it, a relatively small number. I suspect that there wouldn't have been a lot of documents necessarily emailed. My impression is, there were largely discussions in meetings and teleconferences but not necessarily a lot of paper to support it.

**Mr. Peter Tabuns:** And did anyone keep records of those meetings and those teleconferences? Were there any minutes prepared?

**Ms. Tiffany Turnbull:** There are no minutes that I'm aware of, no. There would have been records of the meetings themselves occurring, in terms of scheduling, but I wouldn't have access to any of those records now.

**Mr. Peter Tabuns:** And a typical scheduling record would list what—participants, date, time?

**Ms. Tiffany Turnbull:** Yes, it would be an Outlook invitation that would be in people's calendars.

**Mr. Peter Tabuns:** Did you see many Vapour-lock emails or communications?

**Ms. Tiffany Turnbull:** There would have been some. I often would receive upwards of 500 emails a day on between 50 and 100 different items, given that my role was largely just sort of an air traffic controller. So yes, there would have been some, but in terms of absolute numbers, it's really not possible for me to say.

0900

**Mr. Peter Tabuns:** When the NDP put in a freedom-of-information request to ask for emails that touched on Vapour and Vapour-lock, we were told none existed. Based on what you've said, apparently documents did exist. You saw documents that had those titles?

**Ms. Tiffany Turnbull:** There would have been emails, yes.

**Mr. Peter Tabuns:** Emails is fine. I consider it a document.

We found that kind of mysterious, because in the released documents that have been given to us, we saw documents coming out of the Premier's office, Cabinet Office, that referenced Vapour and Vapour-lock, and yet, when we asked, we were told no such documents existed. But you did in fact see documents?

**Ms. Tiffany Turnbull:** Well, there are emails that you presented to me today on this topic, so yes. In terms of the FOI process, I had no involvement in that, so I'm sorry; I can't speak to the production of those.

**Mr. Peter Tabuns:** I understand you had no involvement. It's just that we're trying to corroborate that in fact such documents existed and that when we would ask for them, it would not be unreasonable to expect that they continue to exist.

The only working group on Project Vapour is the one you've referenced that Giles Gherson would attend, along with Chris Morley and deputy ministers from energy and from finance.

**Ms. Tiffany Turnbull:** That's the only one I'm aware of.

**Mr. Peter Tabuns:** That's fine. I appreciate the clarification.

You earlier said that your boss was peripheral until after the election of 2011 on the Oakville generating station.

**Ms. Tiffany Turnbull:** Yeah. My understanding is that he had a relatively minor role until we were asked to begin facilitating these types of meetings, which to the best of my recollection was following the election in relation to Mississauga, but my dates could be slightly wrong.

**Mr. Peter Tabuns:** Would you repeat those last few words? I'm sorry, the mikes aren't picking you up very well.

**Ms. Tiffany Turnbull:** Sorry. To the best of my recollection, yes, it would have been in relation to the Mississauga issue.

**Mr. Peter Tabuns:** Okay. After the election of 2011?

**Ms. Tiffany Turnbull:** I believe so, yes.

**Mr. Peter Tabuns:** So did the amount of traffic coming in to Mr. Gherson at that point go up substantially?

**Ms. Tiffany Turnbull:** It likely would have, yes.

**Mr. Peter Tabuns:** When you say "likely would have," did you notice it going up?

**Ms. Tiffany Turnbull:** No, I wouldn't have noticed necessarily an increase.

**Mr. Peter Tabuns:** Then this was the group that he assembled: Chris Morley, Deputy Minister of Energy, and Deputy Minister of Finance?

**Ms. Tiffany Turnbull:** Yes.

**Mr. Peter Tabuns:** So, in fact, he became far more involved under Vapour-lock and, if I understand it correctly, had much less involvement with Project Vapour, the Oakville plant?

**Ms. Tiffany Turnbull:** Yes, I'd say that's true.

**Mr. Peter Tabuns:** All right. I note that you said you tracked items through cabinet committees and then going to cabinet.

**Ms. Tiffany Turnbull:** Mm-hmm.

**Mr. Peter Tabuns:** Were there documents going to cabinet on the Oakville generating station and the Mississauga generating station?

**Ms. Tiffany Turnbull:** Not that I can recall specifically. It's possible that if an item would have tracked through some other central agency such as treasury board, I wouldn't necessarily have any knowledge of that.

**Mr. Peter Tabuns:** Okay. So they didn't go through your hands?

**Ms. Tiffany Turnbull:** No.

**Mr. Peter Tabuns:** And were you ever aware of documents or discussions related to the cost of cancellation?

**Ms. Tiffany Turnbull:** Certainly I knew that there was a consideration in the discussions, but I was never a part of those meetings or teleconferences where any of that would have been discussed.

**Mr. Peter Tabuns:** Do you have a recollection of taking any documents prepared by the Ontario Power Authority or the Ministry of Energy and transferring them to Mr. Gherson?

**Ms. Tiffany Turnbull:** It's possible. That was my job to do on a number of files, but usually, given the level of those—the number of them—I wouldn't be reading them necessarily. So I don't have any specific knowledge.

**Mr. Peter Tabuns:** Okay. I don't have any other questions at the moment.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns. To the government side: Madame Albanese.

**Mrs. Laura Albanese:** Thank you, Chair. Thank you for being here, Ms. Turnbull. I and my colleagues really appreciate the way you illustrated your role as an executive assistant, and elaborating also on how these deputy working groups worked.

I wanted to know: During the five years as an executive assistant, did you come across any other informal project names? Was that common?

**Ms. Tiffany Turnbull:** In my role, specifically, within the policy realm it wasn't that common, principally because the documents at the point we see them are tracking towards a committee of cabinet or cabinet itself, and it would be unlikely to use such a name at that time.

**Mrs. Laura Albanese:** I see. Is there any other thing that is important that you would like to add or you would like to say this morning, that you think would be useful to the committee?

**Ms. Tiffany Turnbull:** There's nothing—I mean, my role was just so peripheral and really in support of coordinating the deputy's office, that this was one of so many files. So I'm happy to provide whatever assistance I can, but I have no substantive information to offer.

**Mrs. Laura Albanese:** So you were almost surprised when you were called to the committee?

**Ms. Tiffany Turnbull:** Yes.



**Mrs. Laura Albanese:** Okay. Mr. Chair, we have no further questions at this time. Thank you very much.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Madame Albanese.

Back to the PC side, to Mr. Fedeli; 10 minutes this time.

**Mr. Victor Fedeli:** I just have to write the time down here so I can—thank you very much. I want to go back to the Vapour-lock documents, the emails that you talked about.

**Ms. Tiffany Turnbull:** Okay.

**Mr. Victor Fedeli:** Would they have ever been copied to the OPA or the Ministry of Energy, the Vapour-lock documents? Would you have recalled if any of them came from them?

**Ms. Tiffany Turnbull:** It's possible, yes.

**Mr. Victor Fedeli:** You also talked about teleconferences just a moment ago. How often were those teleconferences held?

**Ms. Tiffany Turnbull:** I couldn't say for sure. It's common to use a teleconference in place of a regular meeting if folks are not available or close by.

**Mr. Victor Fedeli:** Who all would have been involved in those teleconferences?

**Ms. Tiffany Turnbull:** Sorry; as far as I know, it would have been the same folks who would have been involved in that deputy minister's group.

**Mr. Victor Fedeli:** The Morley-Wallace-Lindsay group?

**Ms. Tiffany Turnbull:** Yes.

**Mr. Victor Fedeli:** Were those teleconferences ever recorded?

**Ms. Tiffany Turnbull:** Not that I'm aware of, no.

**Mr. Victor Fedeli:** Back to the Vapour-lock documents again; I'm just a bit hung up on those. How many emails do you think there would be with "Vapour-lock" on it? What's your rough guess? The level of discussion of that.

**Ms. Tiffany Turnbull:** I couldn't say. You mean in terms of ones that I would have seen personally?

**Mr. Victor Fedeli:** Yes.

**Ms. Tiffany Turnbull:** I think it would have been a relatively small number compared to my overall number of emails.

**Mr. Victor Fedeli:** But what does that kind of a number mean?

**Ms. Tiffany Turnbull:** Given that I might have seen up to 500 a day?

**Mr. Victor Fedeli:** Yes.

**Ms. Tiffany Turnbull:** It's possible that maybe there was one a week. It could have been more than that.

**Mr. Victor Fedeli:** One email a week on Vapour-lock?

**Ms. Tiffany Turnbull:** Possibly; it might have been more. They would have been predominately sent to the deputy.

**Mr. Victor Fedeli:** The deputy?

**Ms. Tiffany Turnbull:** Giles Gherson.

**Mr. Victor Fedeli:** From who?

**Ms. Tiffany Turnbull:** It could've been anyone who's involved, frankly. I think probably the largest number of them would have been from the deputy of energy, given his primary role in this file.

0910

**Mr. Victor Fedeli:** You do realize we have no Vapour-lock documents, period. We have none.

**Ms. Tiffany Turnbull:** It's possible.

**Mr. Victor Fedeli:** No emails in the document dump of 20,000. The first document dump of 36,000; the last document dump of 600. Out of almost 57,000 documents, there's not one document that says "Vapour-lock" on it, yet you're telling us here this morning that there are Ministry of Energy documents, emails to your boss—perhaps one a week or more—regarding Vapour-lock, yet we don't have any in our exchange.

**Ms. Tiffany Turnbull:** No, I said it was likely that there could have been some, yes, but—

**Mr. Victor Fedeli:** You said a little bit more than that, if we go back and look at the testimony.

So was Mr. Gherson doing any prep work on the power plants prior to October 2011?

**Ms. Tiffany Turnbull:** Not that I recall.

**Mr. Victor Fedeli:** Any of the files that we spoke about earlier: Would any of those have gone to cabinet or the cabinet committee or the Premier's office?

**Ms. Tiffany Turnbull:** I don't recall them tracking through the cabinet committee, but it's possible. Documents could have been shared with the Premier's office that I was not privy to.

**Mr. Victor Fedeli:** So we do actually have Vapour documents that are cabinet briefing documents?

**Ms. Tiffany Turnbull:** I don't know. I wouldn't have seen them personally.

**The Chair (Mr. Shafiq Qaadri):** Mr. Yakabuski.

**Mr. John Yakabuski:** Thank you very much, Ms. Turnbull. I wanted to go back to your testimony from a little earlier, when you were asked about the email that you sent to Colin Andersen at the OPA. It reads: "Giles asked me to get in touch as he is having some bb problems. PO is asking us to get a copy of the paper (agreement) from the Vapour file asap."

"Is it possible someone could send to me?"

In your earlier answer to Mr. Fedeli, you said that you didn't know what PO stood for, whether it was a person or a thing. Now, I think it's generally understood that if someone uses un-full wording, whether it's an acronym or otherwise, not only do they understand it, but they're quite aware that the person they're sending the email to understands what it is as well.

You testified that you were five years—part of it in the Cabinet Office and part otherwise. And you're telling us—you wrote the email—that you have no idea whether PO stands for a person or an entity. We've only heard two things in this testimony, either from witnesses, yourself or questionings. We've only seen or heard the words beginning with "P" and "O" put together in one way. Are you implying that you do not know what PO stands for?

**“Ms. Tiffany Turnbull:** No, that’s not what I meant in my response. I meant that I wasn’t sure who the person specifically within the Premier’s office was that would have made the request to the deputy, and I wouldn’t necessarily have had a need to know that.

**Mr. John Yakabuski:** Okay. So PO: You clearly understand it to be what?

**Ms. Tiffany Turnbull:** It stands for the Premier’s office.

**Mr. John Yakabuski:** Okay. Thank you very much, because your earlier testimony was quite evasive.

**Ms. Tiffany Turnbull:** I’m sorry; I didn’t mean to be unclear.

**Mr. John Yakabuski:** Okay, very good. Thank you very much.

**The Chair (Mr. Shafiq Qaadri):** Thank you. Just four minutes or so left. Mr. Leone.

**Mr. Rob Leone:** Ms. Turnbull, I’m curious: I heard you state earlier in testimony that you had read Peter Wallace’s testimony before you came to committee. Can you tell us what else you did in preparation for today’s testimony?

**Ms. Tiffany Turnbull:** Yes, certainly. It would be normal procedure to receive some direction from the secretary’s office or counsel on just sort of familiarizing with the process: the fact that I would need to affirm, that I had a right to an opening statement, and those sorts of things. I did have conversations to help prep me, from that perspective.

**Mr. Rob Leone:** So what did those conversations include? What kind of direction did you receive from legal counsel?

**Ms. Tiffany Turnbull:** Really, just that I had the five minutes to provide an opening statement, and what to sort of expect in terms of the set-up of the room, etc. There was no discussion about content, per se.

**Mr. Rob Leone:** Did you pass on your opening statement for someone to review?

**Ms. Tiffany Turnbull:** I’m sorry; I can’t hear you.

**Mr. Rob Leone:** Did you pass on your opening statement to anybody to review whether it was okay?

**Ms. Tiffany Turnbull:** Yes.

**Mr. Rob Leone:** Who would you have—

**Ms. Tiffany Turnbull:** It was William Bromm within the secretary of cabinet’s office.

**Mr. Rob Leone:** And what does he do?

**Ms. Tiffany Turnbull:** He’s counsel to the secretary.

**Mr. Rob Leone:** Okay. Did they advise you of things not to say in committee?

**Ms. Tiffany Turnbull:** No.

**Mr. Rob Leone:** Not at all?

**Ms. Tiffany Turnbull:** No.

**Mr. Rob Leone:** All right. Did they advise you of things that you could say in committee?

**Ms. Tiffany Turnbull:** They advised me of process-type things that I could be asked to speculate or guess on things and that kind of thing.

**Mr. Rob Leone:** All right. In your role as the executive assistant to the deputy, can you maybe run us

through some of the tasks you would have been tasked with as the executive assistant? We talk a lot about document management, and you said “500 emails a day,” but what else you would have done for the deputy?

**Ms. Tiffany Turnbull:** Certainly. Unlike many other deputies’ offices, I was the sole staff for Deputy Gherson, other than our scheduler. So my role would run the gamut from helping her resolve scheduling conflicts to sitting in on briefings for the deputy in preparation of cabinet. I would have brought things to his attention that needed signatures, etc. I would have assisted our admin—

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Ms. Tiffany Turnbull:** I would have assisted our HR folks, etc. in corporate activities that were required.

**Mr. Rob Leone:** So, how would you sort the 500 emails? Would you read them and then say, “Hey, Deputy, please read these ones. You need signatures on these ones,” and so on and so forth?

**Ms. Tiffany Turnbull:** Yes. Depending on the item or who it was from and what was sort of happening that day, I can fairly quickly skim through them. If there are ones that I know that would be something he was working on as opposed to myself—it was common for us to work independently on files.

**Mr. Rob Leone:** In our world—in my world, at least—my EA sometimes actually knows more about what’s going on than the person she’s working for. In your knowledge of your role as EA, would you have the same sort of more in-depth understanding than the deputy?

**Ms. Tiffany Turnbull:** It was possible on certain files, just because of the way we split our workloads up—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Leone. To Mr. Tabuns, 10 minutes.

**Mr. Peter Tabuns:** Thank you, Mr. Chair. Perhaps you could just finish responding to Mr. Leone’s question, and then I have a few for you.

**Ms. Tiffany Turnbull:** Sure. Chair, is that okay?

**The Chair (Mr. Shafiq Qaadri):** Yes, it is.

**Ms. Tiffany Turnbull:** Because of the way that we worked independently, it would be common for me to spend my time on things he didn’t know about, but unfortunately they were the more boring items, such as working on budgeting, HR issues, enterprise-wide activities, such as employee engagement, things that need to be cascaded down to our management team for their staff purposes, such as performance plan schedules. The more mundane administrative tasks: I would say that would often make up a large part of my job. I might, in some cases, know more about some of the agenda management and tracking of items to policy and cabinet committees, but we would bring those to his attention.

**Mr. Peter Tabuns:** Thank you. Would you have, on behalf of Mr. Gherson, sent emails to Mr. Morley or to the deputies in finance and energy to pull people together for the meetings that were scheduled?

**Ms. Tiffany Turnbull:** The normal process for scheduling would have been that our office’s scheduler



would have dealt with their office's schedulers. So I would have possibly been involved if there was, for example, a conflict and there was some guidance required in terms of other things that could be removed or cancelled.

**Mr. Peter Tabuns:** So, can you say that you didn't actually send emails about setting up these meetings with Mr. Gherson?

**Ms. Tiffany Turnbull:** It would have been uncommon.

**Mr. Peter Tabuns:** Can you tell me whether BlackBerry Messenger and BlackBerry PIN messages were used on a regular basis to communicate about matters?

**Ms. Tiffany Turnbull:** My experience is that they wouldn't have been—not between Giles and myself, anyway.

**Mr. Peter Tabuns:** Okay. The protocol for preservation and destruction of documents: Did you keep records of emails coming in and out of your office? Sorry; would it have been expected that emails coming in and out of your office would be preserved?

**Ms. Tiffany Turnbull:** They would have been maintained within my Outlook account for a period of time. My understanding is that they would be auto-archived after that by our IT processes.

**Mr. Peter Tabuns:** So, in fact, the five years of work that you did in Cabinet Office—emails that weren't current would have been auto-archived? That was your understanding of what happened; is that correct?

**Ms. Tiffany Turnbull:** Yes, that's my understanding, although it would be common to delete transitory emails. Things related to scheduling, setting up phone calls, may or may not be maintained because they're not required to be under the records management process.

**Mr. Peter Tabuns:** And paper documents—letters, paper reports—how were they managed?

**Ms. Tiffany Turnbull:** Generally, those would be maintained within paper files.

**Mr. Peter Tabuns:** And was there a protocol for destruction of those documents in any set period?

**Ms. Tiffany Turnbull:** Yes. Every ministry has a records maintenance schedule. Normally they would hold onto documents for a certain period of years before they would be sent to archives.

**Mr. Peter Tabuns:** Let me be clear on that, then. How many years normally would documents be held before they would be sent to archives?

**Ms. Tiffany Turnbull:** I actually don't know because it wasn't within my ambit of responsibility, but each ministry would have its own records schedule.

**Mr. Peter Tabuns:** And Cabinet Office and your office: What was your records schedule?

**Ms. Tiffany Turnbull:** During the period that I was there, we archived some historical documents that had been in the office for many years. I don't believe that any documents that were created during my time would have yet been archived.

**Mr. Peter Tabuns:** And there was no protocol for destruction of documents then?

**Ms. Tiffany Turnbull:** There is a protocol. They would fall under the Archives of Ontario's responsibility to determine destruction. I believe it's 10 years or something.

**Mr. Peter Tabuns:** Okay. So when they leave your hands, they go to the Archives of Ontario. Is that correct?

**Ms. Tiffany Turnbull:** Yes.

**Mr. Peter Tabuns:** All right.

The meetings that Mr. Gherson had after the 2011 election about the Mississauga gas plant: How long did those meetings go—sorry. Not the individual meetings—did they last 10 minutes or two hours: From what period to what period were those meetings held?

**Ms. Tiffany Turnbull:** I'm not sure I could say with accuracy. Initially they would have been on a weekly basis for the first number of months. It seems to me that they trickled off to quite less regular after probably—maybe into 2012.

**Mr. Peter Tabuns:** Okay. And the record of the existence of those meetings would be an Outlook schedule posting? Is that it?

**Ms. Tiffany Turnbull:** That's the most likely place where you'd find the details, yes.

**Mr. Peter Tabuns:** Okay. I just wanted to say to the Chair that I would request a record of those meetings that were held in 2001 and 2012 so we have a sense of who participated.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns. We'll make that request.

**Mr. Peter Tabuns:** Okay. I have no further—thank you for your assistance today.

**Ms. Tiffany Turnbull:** Thank you.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns. The government side? Ms. Albanese, 10 minutes.

**Mrs. Laura Albanese:** Thank you, Mr. Chair. Ms. Turnbull, I want to thank you again for being here today, for being so open, for being really forthcoming. Thank you for your time and for being so thorough.

**Ms. Tiffany Turnbull:** Thank you.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Ms. Albanese. If there are no further questions, I'd thank you, Ms. Turnbull, on behalf of the committee.

Seeing that there's no further business, we will be recessed until later.

Yes, Mr. Tabuns?

**Mr. Peter Tabuns:** Just to be clear, Mr. Chair, you will be requesting those schedule documents from the Premier's office?

**The Chair (Mr. Shafiq Qaadri):** As with duly established protocol, we shall certainly execute said correspondence.

Recessed till 3 p.m. today.

*The committee recessed from 0924 to 1501.*

MR. JAMISON STEEVE

**The Chair (Mr. Shafiq Qaadri):** Thank you, colleagues, ladies and gentlemen. I reconvene the Standing



Committee on Justice Policy. As you know, we are continuing to hear witnesses. I would now invite Mr. Jamison Steeve to please come forward and be sworn in.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Do you solemnly swear that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

**Mr. Jamison Steeve:** I do.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Steeve. I'm sure some of these procedures may be familiar to you in your previous capacity. You have five minutes in which to make your opening address, and then 20-minute rotations. I invite you to begin now, please.

**Mr. Jamison Steeve:** Thank you, Chair.

My name is Jamison Steeve. I am currently the executive director of the Martin Prosperity Institute and the Institute for Competitiveness and Prosperity. I have served in that capacity since September 2012.

Prior to that, I was the principal secretary to Premier Dalton McGuinty from the end of June 2008 until the end of June 2012. In that role, I had a variety of responsibilities, but they focused on three main areas: to advise the government on overall policy development and legislative agenda; I was involved in strategic communications like the budget, the throne speech and the fall economic statement; and finally, I engaged in key stakeholder engagement and issues management.

It is my understanding that the mandate of this committee, amongst other things, is to consider and report its observations and recommendations concerning the tendering, planning, commissioning, cancellation and relocation of the Mississauga and Oakville gas plants.

I was involved in the Oakville gas plant file from June 2010 until the spring of 2011. I met with TransCanada, the proponent in Oakville, I believe at their behest, in early June of 2010. Between June of 2010 and October 2010, I met with TransCanada, I believe, five times. All of these meetings were conducted without prejudice and along with my colleague the Premier's policy adviser on energy, Sean Mullin.

I was tasked with exploring options to see how the government could resolve an increasingly intractable situation in Oakville. TransCanada had already met with other people associated with the government, including Mr. Mullin and the Minister of Energy. My discussions with TransCanada were exploratory in nature as I did the due diligence necessary to help the government determine how to proceed.

In the final two meetings with TransCanada that took place in October 2010, I was asked to communicate three points: (1) that the government would be issuing a minister's directive to the OPA that the government would not be proceeding with the gas plant in Oakville, and (2) request that TransCanada consider not proceeding with litigation at that time so that (3) TransCanada and the OPA could enter into productive negotiations.

I had minimal involvement in the Oakville gas plant file after my meetings with TransCanada in October. My

involvement with settlement negotiations was limited, as those conversations were, I believe, between the OPA, TransCanada and, I believe, the Ministry of Energy.

As the committee was informed by the secretary of cabinet, Peter Wallace, I was screened from the Oakville gas plant file in the spring of 2011. As a result, I had no further involvement with the file from that time onwards. I was told by then-secretary of cabinet Shelly Jamieson that I was being screened because TransCanada had threatened litigation and I was a potential witness in that litigation and would possibly be called upon to give evidence.

Shortly thereafter, I met with government lawyers, provided them with my notes from meetings and answered their questions regarding my discussions with TransCanada. I had no further involvement with the Oakville gas plant file, including settlement, relocation or document production, after the spring of 2011.

My involvement with the Mississauga gas plant file was minimal. I had very limited involvement with the issue during the campaign. My primary interaction with the file was for a two- or three-week period at the end of October and early November 2011, when the government was trying to give life to its campaign commitment with respect to the Mississauga gas plant. At that time, I was both acting chief of staff and principal secretary, and my role was to work with Shelly Jamieson and Giles Gherson from Cabinet Office to get the public service's best advice on how to fulfill the government commitment. My involvement in the Mississauga gas plant file ended upon the return of the chief of staff, Chris Morley. I was not involved in any discussions related to settlement or relocation with respect to Mississauga, nor was I involved in document production related to requests from this committee.

Thank you. I look forward to your questions today.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Steeve. We'll begin with the NDP. Mr. Tabuns, 20 minutes.

**Mr. Peter Tabuns:** Thank you, Chair, and thank you, Mr. Steeve. I appreciate your presence here.

**Mr. Jamison Steeve:** Sorry, sir, just before we begin, I'm unfamiliar with the procedure. The last time I was here, it was seven-minute increments for each party. This is obviously—

**The Chair (Mr. Shafiq Qaadri):** Twenty, 20, then 10, 10, 10. And it's Mr. Stee-vee.

**Mr. Peter Tabuns:** I'm sorry?

**The Chair (Mr. Shafiq Qaadri):** Mr. Stee-vee.

**Mr. Peter Tabuns:** I thought I said that.

**Interjection:** Yeah, you did say that.

**Mr. John Yakabuski:** I'll stand by you, Peter.

**Mr. Peter Tabuns:** Yak, I appreciate it.

You first got involved with the cancellation of the Oakville gas plant in June of 2010.

**Mr. Jamison Steeve:** That's my recollection; yes, sir.

**Mr. Peter Tabuns:** Who directed you to get involved?



**Mr. Jamison Steeve:** The initial contact—as I say in my opening statement, I believe TransCanada made the initial outreach to meet with me. I had had conversations with my chief of staff as well as the Premier in advance of meeting with TransCanada to begin those discussions.

**Mr. Peter Tabuns:** So TransCanada connected directly to you.

**Mr. Jamison Steeve:** That's my recollection, sir. If I recall correctly, it was Chris Breen from TransCanada, who I believe was their government relations person. I apologize; obviously, recollections are sometimes tough, but I believe he had contacted me by email and we set up a meeting. I believe the first meeting was with Chris Breen and Sean Mullin and myself. As I said, TransCanada had had conversations with other people associated with the government previously. They had met with Sean prior to June 2010, and I believe also with then-Minister of Energy Brad Duguid in advance of that meeting as well.

**Mr. Peter Tabuns:** Okay. Can you tell us when it was decided to cancel the Oakville gas plant?

**Mr. Jamison Steeve:** Early October, 2010.

**Mr. Peter Tabuns:** And who made that decision?

**Mr. Jamison Steeve:** That decision was made by the Premier and the Minister of Energy.

**Mr. Peter Tabuns:** Were you familiar with the project prior to June of 2010?

**Mr. Jamison Steeve:** I think more accurate language for me, sir, would be that I was familiar with the issue, making a distinction in that I was aware that there were some concerns coming out of Oakville with respect to the building of the plant. But to claim that I had extensive knowledge of some of the other issues that are before the committee by way of procurement tendering and the project—that was beyond my scope.

**Mr. Peter Tabuns:** Can you tell us what those issues were that you were aware of, the problems that were being faced with the construction of the plant?

**Mr. Jamison Steeve:** Again, I wouldn't necessarily articulate them as problems with construction of the plant, but my understanding of the issues that were arising around Oakville were multiple.

First of all, you had a local ratepayer group that was deeply concerned about the location of the plant. Secondly, we had a local MPP who was expressing those concerns in the media, within caucus and to political staff. You also had the opposition parties both raising issues in the House with respect to the location. So the public issue would be number one.

Number two would be that the city of Oakville had passed, I believe, two bylaws. The first bylaw—my recollection was that they were trying to prevent anything over 10 megawatts, I believe was the language. I can't recall exactly. The second was, I believe, related to the airshed.

Number three was that Mr. Flynn had introduced a private member's bill that was gaining some substantial traction in the House by the time June rolled around and had given all of us some reason for pause from a

regulatory environment perspective. The Green Energy Act had introduced a setback on wind turbines to the tune of, I believe, 550 metres. This gas plant was located under 400 metres from both residential and schools. I think Mr. Flynn did what any great backbencher is supposed to do. He had raised the issue repeatedly since the awarding of the contract, and, when his community was still raising extensive concerns, brought forward a private member's bill that I think was gaining all-party support. So that put it on our radar screen as well.

Finally, I would say that there were some concerns being raised by TransCanada in earlier meetings with other folks that the proceeding of the construction might be impeded slightly by the bylaw that was there from the city of Oakville.

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**Mr. Peter Tabuns:** And why was the plant cancelled?

**Mr. Jamison Steeve:** The plant was cancelled for four reasons, I suppose: Number one, to give life to the concerns of a local MPP, a local community, and the consensus that it had built with opposition and the rest; number two, to give some sensibility to the fact that these bylaws ultimately were going to have to be legislated over by the province if we were to move ahead with the plant. TransCanada had raised the issue in several of the meetings that I had with them about the concept of force majeure, that they might not be able to complete the contract if the bylaws were allowed to stand. So the province would have to legislate over them, which would have put us in a position of introducing a piece of legislation in the House, where Mr. Flynn would have had to either vote with the government or vote against his home community, and that felt like a difficult thing to do at the time.

As well, there was the issue of the regulatory environment, as I said. We were alive to that concern and trying to find ways to articulate our view that maybe that isn't acceptable in the current context.

Lastly, in September and into October, through the creation of the long-term energy plan—as the Premier's office, namely Sean Mullin, along with the Minister of Energy's office and the OPA and the Ministry of Energy were putting the long-term energy plan together, it came to light that we no longer required the power in Oakville at either the rate or the speed at which it was originally contracted for. That was one of the key elements for moving forward, and that was what was communicated to TransCanada at the time, in October.

**Mr. Peter Tabuns:** Okay. The team that was going to manage the cancellation and was going to work through things with TransCanada Enterprises: Who put that team together?

**Mr. Jamison Steeve:** I don't understand the question.

**Mr. Peter Tabuns:** You met with TransCanada in the company of Sean Mullin. I assume you were talking with other people in the Premier's office. We've had testimony that there were committees struck at various levels. I'm assuming that you didn't operate on your own.

**Mr. Jamison Steeve:** I apologize. Yes. With respect to managing the cancellation of the plant, it wasn't a



team constructed to manage the cancellation of the plant. Sean and I were tasked, following conversations with at least two other colleagues of mine within the Premier's office—Dave Gene and Chris Morley, and in conversations, as I said, previously with the Premier—to sit down with TransCanada to explore what options might be available.

Just for clarity, sir, upon the first meeting with TransCanada and even into the second and third meetings, the cancellation of Oakville was just one of the options. Moving forward with legislation rather than cancellation was an option that was put on the table and one that was explored by the government at that time.

The individuals were Sean Mullin and I meeting with TransCanada, and had conversations with other members of senior staff.

**Mr. Peter Tabuns:** In conversations, the Premier and Chris Morley had said to you, "Please take carriage of this task"?

**Mr. Jamison Steeve:** Yes.

**Mr. Peter Tabuns:** Okay. One of the things that continually comes up in these documents is the idea that TransCanada Enterprises has to be made whole, that they should suffer no losses from the situation before you. When was that decision taken and why was it taken in that form?

**Mr. Jamison Steeve:** I can't speak to that, sir. The only time that "whole" or "close-to-whole" was used was that TransCanada articulated that position to me when I met with them in October. But as far as a decision on the government's bargaining position, as I say, it's difficult for me to answer as a result of the fact that I was taken off the file as of April. I believe settlement negotiations concluded sometime this fall—sorry; the fall of 2012.

**Mr. Peter Tabuns:** I've got—I don't know if he has been given that document?

**Mr. Jamison Steeve:** I have received no documents in advance of today.

**Mr. Peter Tabuns:** I'll give you one.

What you have are notes to file between Michael Barrack and John Finnigan, representing TransCanada Enterprises; legal staff from a variety of departments—Halyna Perun, John Kelly, Carolyn Calwell and Malliha Wilson. These come from a meeting in 2011 where TransCanada Enterprises is trying to summarize its experience with the government and goes through their experience and discussions with you, and I'd like to get clarity on a number of these things.

I think I put a mark on yours midway through the first section there: "JS recognized the responsibility of Ontario." Do you see that line?

**Mr. Jamison Steeve:** Yes, sir.

**Mr. Peter Tabuns:** If they recorded that accurately, what did you mean?

**Mr. Jamison Steeve:** Just so I'm clear, sir, these are notes of legal counsel from the Ministry of Energy?

**Mr. Peter Tabuns:** They are Ministry of Energy notes from a meeting with TransCanada Enterprises legal counsel Michael Barrack and John Finnigan.

**Mr. Jamison Steeve:** So, do we know, sir, who is saying, "JS recognized the responsibility of Ontario"?

**Mr. Peter Tabuns:** This is how TransCanada Enterprises related their discussion with you.

**Mr. Jamison Steeve:** Okay. I'll do my best to recall. I believe that in my initial conversation with TransCanada I did recognize that there had been a contract awarded by the OPA to TransCanada. There was an ongoing contract, and that contract was what they were proceeding under.

**Mr. Peter Tabuns:** Okay. It was noted here, "Cost not separate from politics."

**Mr. Jamison Steeve:** Certainly. As I said, the initial conversation was looking at basically two possible courses of action and trying to discuss what the pros and cons of those were. One of those would be to proceed with the plant in Oakville by way of legislation dealing with the bylaw from the city of Oakville, and the second would be to consider whether another option was available for a different site. The cost of that is not immaterial from the perspective of the public appetite for moving such a plant.

**Mr. Peter Tabuns:** The political cost was not separate from that?

**Mr. Jamison Steeve:** No, sir, the cost of moving the plant. It's not the political cost; it's the fiscal cost. The note says, "Cost not separate from politics." So it's not the political cost; it is not knowing how much it would cost to move Oakville, trying to get some sense from TransCanada as to their sense of what that cost might be, rather than a political cost.

**Mr. Peter Tabuns:** And what was your political consideration on this?

**Mr. Jamison Steeve:** Multiple. So, obviously one of the political considerations was—I think we need to step back and understand what the word "political" means. I guess when I use it, "political" means that it is necessarily involving the decisions of elected officials and their staff.

For me, the way I carried myself and did my business through my nine years here is that politics necessarily involves both a public policy bent as well as what the impact is for any local member back in their community. So, in this case, you definitely had a member who was feeling some pressure on the local front and was trying to give life to the public interest as he saw fit within his community.

**Mr. Peter Tabuns:** The next point was, "Need one month to feed information." Do you have any insight on what that means?

**Mr. Jamison Steeve:** I don't know who said that, sir, so it's difficult for me to say.

**Mr. Peter Tabuns:** Okay. "Decision to be made by July 29." Was that a decision that you and the Premier's office were going to make by July 29?

**Mr. Jamison Steeve:** If I recall correctly, sir, TransCanada was having a board meeting on or about the 29th, and they were asking for a decision on or by that date.

**Mr. Peter Tabuns:** The next line is, "Five people; no public servants will make the decision."



**Mr. Jamison Steeve:** I'm not sure who or when that was said, but in my mind this was a decision that was ultimately made by at least two; namely, the Premier and the minister. So it's possible that I said that, but I'm not sure if I can recall that.

**Mr. Peter Tabuns:** Mr. Steeve, do you still have your notes from these meetings?

**Mr. Jamison Steeve:** I do not. As I said in my opening statement, I provided them to counsel when I was screened off the file—provided them with those notes. I have no files from my time.

**Mr. Peter Tabuns:** And that counsel was your personal counsel or—

**Mr. Jamison Steeve:** Oh, no, sir; that was counsel for the government.

**Mr. Peter Tabuns:** So it should be reasonable for us to assume that counsel for the government has retained those notes?

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**Mr. Jamison Steeve:** I can't speak to that, sir, but reasonableness and counsel are sometimes difficult.

**Mr. Peter Tabuns:** I'll drop down to the next meeting, July 15. We had them quoting you, "JS says my boss says: yeses good, noes not bad, maybes will kill us."

**Mr. Jamison Steeve:** Yes, I believe what we are talking about at this point—if you can just give me a moment to take a look at the note. If I can recall correctly, sir, this was July 15.

**Mr. Peter Tabuns:** Yes.

**Mr. Jamison Steeve:** Again, TransCanada came in presenting a series of options as far as what other locations might be amenable or possible. Secondly, I believe they also raised the issue of again, force majeure and moving forward with legislation. Increasingly, the file felt like it was in a place of uncertainty; you weren't sure if the plant was going to be able to go forward one way or the other. The Premier at the point, both in public speeches and privately, was fond of saying, "Uncertainty is a challenge, so let's get files to a place where we're either moving forward or not moving forward. But it's the uncertainty that's a real problem."

**Mr. Peter Tabuns:** In the next item—sorry, two points down—"Ford not going to happen (reference location of SWGTA plant)."

As I read this, you are telling TransCanada enterprises on July 15 that the Ford location is simply not going to happen.

**Mr. Jamison Steeve:** No, sir. First of all, I can't confirm that I said that. It doesn't indicate in the notes that JS said it.

**Mr. Peter Tabuns:** No, that's correct.

**Mr. Jamison Steeve:** Number two, if I can recall correctly, I increasingly felt like Ford was going to be a challenge, but if you see the line below, "Will give you a decision ... next week," and also the bottom line, "We hear" from "(30,000?) people before we make a decision."

I made it clear constantly to TransCanada that I didn't have the ability to execute this decision and that I was

going to have to go back and confirm any direction. Unfortunately, at least in this instance, I wasn't able to get a decision in a timely way, one way or the other, by the end of July.

**Mr. Peter Tabuns:** So when previously it was said, "Decision to be made by July 29," by July 15 you were still thinking that it was doable fairly soon.

**Mr. Jamison Steeve:** We were having a discussion with TransCanada. They had made a request. I was trying to live up to that request, but I was unable to corral a decision in time because the government had yet to make a decision by the end of July.

**Mr. Peter Tabuns:** On the next page—October 1, 2010, Chris Breen's notes, meeting with you, Alex Pourbaix, Sean Mullin—we've got: "Rationale—all about supply and demand; power plan provides options."

**Mr. Jamison Steeve:** I'm sorry, sir, where are you?

**Mr. Peter Tabuns:** If you look down the page to October 1, 2010, Chris Breen's notes. Go down five lines. "Rationale—all about supply and demand; power plan provides options."

**Mr. Jamison Steeve:** Yes, sir.

**Mr. Peter Tabuns:** What did you mean?

**Mr. Jamison Steeve:** It goes back to what I had stated in respect to your earlier question about why the government made the decision. As we were going through the long-term energy plan, it came to light that we no longer needed the power that had been contracted for in that particular location in that particular time frame. That is what I communicated to TransCanada at that time—

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Jamison Steeve:** —and that was the primary rationale for the decision that was communicated to them on the 1st.

**Mr. Peter Tabuns:** I'll continue with this when my 10 minutes comes back. If we didn't need the plant, why are we building it?

**Mr. Jamison Steeve:** I believe, sir, what I'm saying is that we didn't necessarily need the plant in the time and the location that it was. At least that's what it was as it came through the long-term energy plan, and I wasn't privy to the negotiations. So as far as why they're building it, I can't speak to that post-April.

**The Chair (Mr. Shafiq Qaadri):** To the government side: Mr. Delaney, 20 minutes.

**Mr. Bob Delaney:** Jamison, good to see you back in Queen's Park.

**Mr. Jamison Steeve:** You too, sir.

**Mr. Bob Delaney:** We know that you were the principal secretary to the Premier of Ontario, so for the benefit of the committee, would you just give us a little outline about the role of the principal secretary to the Premier of Ontario?

**Mr. Jamison Steeve:** The role, as I stated in my opening statement, involves a multitude of tasks, but the primary tasks would be threefold: number one, working with the public service, the ministers' offices and the ministries to develop good public policy, and then, secondly, to help construct the legislative agenda for any

particular session in the sitting of the House. Obviously, I was a political staffer, so working on the political class side but working with the OPS on developing those; and then, secondarily, while my primary function wasn't around communications but far more around public policy, from time to time I was pulled into the process that is the budget, the throne speech and the fall economic statement; and lastly, from time to time, meeting with key stakeholders as well as certain issues management over time. I had the pleasure of having worked at Queen's Park, off and on, for close to nine years in my last stretch, and had worked in opposition as far back as when I was 20, so on occasion—I was the oldest guy in the room, so on occasion they would ask me to step up on issues management from time to time.

**Mr. Bob Delaney:** You had more hair when you were in opposition.

**Mr. Jamison Steeve:** I worked for George for a while, sir.

**Mr. Bob Delaney:** I think very little more on that needs to be said.

Just on that role, I know in my case, sometimes as a colloquialism with my people, I say, the member has one body and one set of eyes and ears, but taken together as a team, we have five sets of eyes and ears and five minds. In the Office of the Premier, I would imagine that an important part of your job was to ensure that some of the needs and concerns of communities across the province would be reflected in government decisions and some of the government's things that it needed to know often came through your eyes and ears. Do you want to elaborate on that a bit more?

**Mr. Jamison Steeve:** Certainly. My political training was provided to me mostly by two men: Sean Conway and Jim Bradley. So at the end of the day, the voice of the local MPP was drilled into me rather vociferously, that at the end of the day I am just staff and I am here to serve the needs of the MPPs. So certainly from both our caucus and others, issues would arise, capital requests, issues of local concern, issues of provincial concern. I can look at all three of you anyway and think of issues that were brought to light over time that had both a local flavour as well as a provincial impact: long-term-care homes, hospital capital, the rest, so certainly those would come to me, but also I had a staff of anywhere between six to eight policy advisers who worked with, depending on the time, up to 27 to 30 ministries. It is a rare experience to get an opportunity to work in the positions that I had, an experience that I enjoyed immensely, but I also enjoy my new role.

**Mr. Bob Delaney:** Certainly the three of us would be very different taskmasters than were Jim Bradley and George.

**Mr. Jamison Steeve:** I thank them both for their education.

**Mr. Bob Delaney:** You would have been aware, probably through MPP Flynn, of the local opposition against the Oakville power plant?

**Mr. Jamison Steeve:** Yes, and also on a daily basis, like any good staffer, I would read my clippings, so those would come to light, as well as I think the Premier had—I think there were at least one or two experiences where he had events in Oakville and protests—he had been engaged by folks who had concerns, so through him as well.

**Mr. Bob Delaney:** So whether the principal secretary to the Premier was named Jamison Steeve or somebody else, that role—it would have been sensible for that role to have been instrumental in going to figure out, what is this all about? What impact does this have on the government in general, on the Ministry of Energy in particular, and what should we be doing about it?

**Mr. Jamison Steeve:** I think at the point that I became engaged, yes. It's not as if every issue that the government faces on a day-to-day basis necessarily ends up on the desk of the chief of staff or the principal secretary. I think for some time there was an attempt to deal with the issue; I think TransCanada had made attempts, as well as the OPA, by way of community consultations to address some of those concerns, but as I said both in my opening statement and in answer to Mr. Tabuns, there were a series of factors that had arisen by the point that I became involved.

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The issue was elevated, and so, on my day-to-day basis—some of you would recall, my to-do list would be rather long. For something to come up to me to try to manage or deal with, it would have to be a significant issue. We have an issues management staff, policy staff and great ministers; they can all deal with these things, generally. This was one of several that came to my desk.

**Mr. Bob Delaney:** Following up on that: As the principal secretary to the Premier, it's probably fair to say that when you showed up for work, there was a multitude of active files that you had going at any one given time?

**Mr. Jamison Steeve:** That's what made the job enjoyable, yes.

**Mr. Bob Delaney:** At any given time, what general range of significant issues would you have going? Would it be just a few? Would it be half a dozen to a dozen? Would it be more than a dozen? In other words, how thinly spread were you?

**Mr. Jamison Steeve:** I felt in control the whole time, sir.

That being said, I guess the issue of the language "significant issue"—all issues are significant that are raised by members and that happen within this House. At any given time, definitely upwards of a dozen that you're dealing with, and legislation coming to the House. When my son was born, I took three days off because we had a budget to write and a throne speech to write. In retrospect, that was a poor decision. I was spread thin in other areas, but perhaps my commitment to the issues of the day here was greater than it probably needed to be at the time.

*Interjection.*



**Mr. Bob Delaney:** Donna says you're lucky you're still married.

**Mr. Jamison Steeve:** Yes, I am.

**Mr. Bob Delaney:** Is it normal in the course of the duties of the principal secretary to receive various stakeholders here at Queen's Park in your office, and to go into the field to meet with them?

**Mr. Jamison Steeve:** Absolutely, be it university leaders, union leaders, hospital or city representatives—absolutely. I think I was, in part, much like any staff member is, an extension of the member or the office that you work for. When you work for the Premier, there are a number of people who would like his time as well, and if I had a couple of things on my plate, he had more. Part of your role sometimes is to take those meetings and make sure you move a file forward, address it or listen to the concerns that are raised.

**Mr. Bob Delaney:** So, to encapsulate it: People like you, whether it's that title or whether it's another role, would normally be connected with members of caucus, with various people in the public service, with some of the agencies within the government and with private stakeholders on a variety of different files.

**Mr. Jamison Steeve:** Absolutely. I think it's always hard to describe the role of a political staffer, but at the end of the day, you are an extension of the office for which you work, and your job is to provide the best advice to the person that you work for. Sometimes you are extending the hours that that person has available by making your hours available. Certainly, meeting with stakeholders was a part of that, as was meeting with ministers and meeting with members; the scope is fairly broad.

**Mr. Bob Delaney:** Right. And that's not the scope as you interpreted it; no matter who would fill that role, that's the scope of the role, right?

**Mr. Jamison Steeve:** Not only my role, but other political staffers' as well—but yes.

**Mr. Bob Delaney:** All right. Did you ever have any interaction with current Premier Kathleen Wynne on this Oakville file? Did you ever brief her about it?

**Mr. Jamison Steeve:** No.

**Mr. Bob Delaney:** To the best of your knowledge, did Kathleen Wynne take part in any of the campaign decision-making on either power plant?

**Mr. Jamison Steeve:** Well, first of all, there were no campaign decisions on Oakville. Oakville was in October 2010, and the campaign didn't start until sometime after. I'm sure that's a point of contention—when it started, but September was when I believe the writ dropped.

As far as the Mississauga gas plant, the commitment—during the decision—I can't speak to that. I have no knowledge that she was involved.

**Mr. Bob Delaney:** On the subject of campaigns in general, I understand you've been involved in a number of them?

**Mr. Jamison Steeve:** Yes. From a central campaign perspective, I was involved in the central campaigns in 2011 and 2007. My first campaign was 1985.

**Mr. Bob Delaney:** You're starting to let your vintage show.

**Mr. Jamison Steeve:** I was 12. Jim finds you early.

**Mr. Bob Delaney:** That's good. My father had me out at seven.

**Mr. Jamison Steeve:** You win.

**Mr. Bob Delaney:** I'm not sure about that.

In election platform and policy development, have you ever been involved on behalf of the Ontario Liberal Party?

**Mr. Jamison Steeve:** Yes. In 2007, I helped write the health portion of the Liberal platform, and in 2011, I was the overall architect of trying to put the 2011 platform together.

**Mr. Bob Delaney:** Walk us through what happens to some of the commitments that parties make during campaigns. Once elected, what does a government do with the promises that they've made during the campaign?

**Mr. Jamison Steeve:** Well, at least in the experience that I've had, I suppose both in 2007 and then 2011, the early days will involve sitting down with members of cabinet, and then also Cabinet Office, and looking at giving life to those campaign commitments.

If I were to give an example from 2011, we made a commitment for the Healthy Homes Renovation Tax Credit. That would involve the Ministry of Finance and Cabinet Office and trying to determine whether legislative tools were required—do you put that in a budget?—basically, trying to give life to that.

Our policy shop prided itself a little bit on having some of these ideas more articulated than not, when we came back to office, but you're always going to require the helping hand of the OPS to give life to those things.

**Mr. Bob Delaney:** So, to use your analogy on the Healthy Homes Renovation Tax Credit, it would be perfectly acceptable and common and accepted practice for campaign commitments—which, during the campaign, there's no doubt they're political commitments—to then be implemented as government policy, should the party making the commitment be elected.

**Mr. Jamison Steeve:** Yes, sir.

**Mr. Bob Delaney:** That seems to be the nature of the game.

As a Liberal staffer, I assume you paid close attention to the policies and commitments of the PC and the NDP parties?

**Mr. Jamison Steeve:** I did.

**Mr. Bob Delaney:** Okay. So you'd be fully aware that all three parties promised to cancel and/or relocate both of the Mississauga and Oakville power plants. Would that be correct?

**Mr. Jamison Steeve:** Yes, but again making the distinction for the other two parties as well: They didn't make a campaign commitment on Oakville. They had taken a position in advance of the decision on Oakville. All three parties did make a commitment on Mississauga, as far as I understood.

**Mr. Bob Delaney:** Okay, thank you for clarifying that.



During his testimony last week, Oakville mayor Rob Burton told the committee—and I'll use his words—that he “won promises from all parties to stop the proposed power plant.” With the Mississauga power plant, our mayor, Hazel McCallion, confirmed—and I'm going to use her words—“I think all parties would have cancelled it.” So we have transcripts and campaign literature and robocall scripts that highlight the commitment made by the opposition to move the plants.

Comment a little bit on whether or not it surprises you that the other two parties appear to be trying to wash their hands of this issue and vilify the government for following through on the commitments of all three parties.

**Mr. Jamison Steeve:** To be honest, sir, I haven't been paying as much attention to the comments and the concerns about the vilification. I think I'd feel uncomfortable commenting on that. My understanding was that all three parties made a commitment.

I saw, I believe, Mayor Burton's comment in the media of, “How would you have brought this commitment to life if you had won?”, which was, I think, a question he put back to the committee. I think everyone would have had their own way of handling the situation, should they have won office.

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**Mr. Bob Delaney:** Okay. So I think everybody on this committee is going to agree that the proposed Mississauga and Oakville gas plants didn't belong in these three communities. I know, as a Mississauga member, that MPPs and candidates from all three parties were against the plants and that they would have been either cancelled or relocated, regardless of which of the three parties formed government. In recent weeks, Premier Wynne has expanded on this committee's mandate to learn from these experiences so that the future placement of energy infrastructure is done correctly from the very outset.

In the last few minutes of this, our job is to report back to the House with some concrete recommendations on energy siting policy. Given this and given your experience and your insight, having been the principal secretary to the Premier, would you have any recommendations that would be useful to the committee on how future power generation sites might be selected?

**Mr. Jamison Steeve:** Certainly. I respect the work that the OPA has to do. The OPA is given a mandate to move forward with the planning of our energy system, and they necessarily went through the procurement process. I'm not fully aware of all the levels of community consultation that they do in advance of selecting either a proponent or a physical site, but clearly, in this instance, the opposition in Oakville was strong and vociferous from day one. And it seems that the same happened in Mississauga.

I don't claim to be an energy expert like some of the folks at the OPA would be, but it seems to me that at least involving some of the larger community in that process would be essential. I think also, if I may further expand on the committee's mandate, when you look at—I think governance issues around energy are something

that the committee could probably offer a lot of insight on.

The reason the political class got involved was because ultimately the mandate to the people is that of the elected representatives. The OPA is charged with planning the energy system. The reason that I was sitting down with TransCanada was because that public interest and that public voice had no other place to go but to its local member and, then, through its local member, to the government. Where does the political accountability and the public interest begin and the role of the agency end? I thought Ms. Butler raised some valid questions about that, but, again, I think we acted appropriately as political staff and political class to make a decision for the minister's directive.

**Mr. Bob Delaney:** Okay. Did the experience teach you anything or lead you to any conclusions on how any government can better engage local leaders and local organizations in decisions regarding the siting of electricity infrastructure?

**Mr. Jamison Steeve:** By the time I was involved in the file, sir, the local interaction was not going well, so my learnings were more probably on the back end rather than the front end, so I think I'm ill-equipped to answer the question.

**Mr. Bob Delaney:** Anything else you wanted to add in the last few minutes?

**Mr. Jamison Steeve:** No. Again, I think that my process was to provide the government with best advice on how to move forward, at least, as I said, on the Oakville situation, and I tried to do so.

**Mr. Bob Delaney:** Chair, I think we're done.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney.

To the PC side: Mr. Fedeli. Twenty minutes.

**Mr. Victor Fedeli:** Thank you very much, Chair. Thank you very much, Mr. Morley, for—

**The Chair (Mr. Shafiq Qaadri):** Steeve.

**Mr. Victor Fedeli:** Mr. Steeve, sorry. That time, I did have the wrong name—for being here; appreciate it.

**Mr. Jamison Steeve:** Thank you.

**Mr. Victor Fedeli:** So a couple of quicker questions at the beginning here. Did you talk to anybody in the Premier's office or in the government about your testimony today?

**Mr. Jamison Steeve:** No, I did not.

**Mr. Victor Fedeli:** Have you had any discussion with anyone in the government—political staff, ministry, cabinet—about the power plants since your departure from the government?

**Mr. Jamison Steeve:** Sorry, that are active in government?

**Mr. Victor Fedeli:** Either way.

**Mr. Jamison Steeve:** The only thing—I'm trying to recall. About the power plants, no.

**Mr. Victor Fedeli:** Have you spoken about the power plant issue with Premier Wynne or anybody in her transition team?

**Mr. Jamison Steeve:** No, I have not.



**Mr. Victor Fedeli:** Very quickly—I think you’ve answered it already, but I just need to hear: As principal secretary, what were your primary duties? There’s a line in here that says, “My boss says: yeses are good; noes are bad.” Who’s your boss?

**Mr. Jamison Steeve:** Oh, sure. Well, at the end of the day, my employer was 13.5 million people but my boss was the Premier of Ontario. So I worked for the Premier but my primary responsibilities, as I said, were to work with developing the policy agenda and the legislative agenda for the government, giving advice on that, number one—

**Mr. Victor Fedeli:** So when it says “My boss says,” you’re referring to the Premier, in that sentence?

**Mr. Jamison Steeve:** Yes. I believe I addressed that earlier in the question from Mr. Tabuns.

**Mr. Victor Fedeli:** Okay. Well, sometimes I don’t hear him down at this end.

**Mr. Jamison Steeve:** I apologize.

**Mr. Victor Fedeli:** I want to go back to the handout that we gave. I think we’re working, Peter, from the same handout. In the first couple of sentences there, it says: “They see four constituencies in play: OPA, civil servants, political staff and politicians.” Where would the public constituency be in all of that?

**Mr. Jamison Steeve:** Significant, sir. The reason that I was involved, in large part, was because Mr. Flynn had obviously raised the concern repeatedly, both with staff and, I would assume, the Minister of Energy. As well, he had introduced his private member’s bill, which gave greater life to the issue, particularly in the House. I think both parties were in line to support the private member’s bill to recognize that this particular plant was within the boundary that was, I think, created by the Green Energy Act: 550 metres.

**Mr. Victor Fedeli:** Down about a third, where it says, “Cost not separate from politics,” would you know what the cost was at this point? Do you have a calculation of the cost?

**Mr. Jamison Steeve:** No, sir.

**Mr. Victor Fedeli:** So when it was cancelled, there was no understanding of what the cost was to cancel the plant.

**Mr. Jamison Steeve:** Two separate points, sir. Number one, the note to which you’re referring, from what I understand—and again, these aren’t my notes and I’m seeing them for the first time—as I understand it, it’s language from the lawyers for TransCanada to lawyers from the government. But that wasn’t the date upon which the cancellation happened. In June—

**Mr. Victor Fedeli:** So let’s just jump to the question then.

**Mr. Jamison Steeve:** Sorry, if I could just answer your question—

**Mr. Victor Fedeli:** My question is, when you were first dealing with this cancellation, when the announcement was made, what was the cost of the cancellation at that point?

**Mr. Jamison Steeve:** Certainly, sir. In early October 2010, there remained uncertainty about the cost of the cancellation, largely because that was going to be a subject of negotiation between the OPA and TransCanada.

**Mr. Victor Fedeli:** Okay, that’s fair. That’s the answer. So where it says, “Five people, no public servants, will make the decision,” who were those five people?

**Mr. Jamison Steeve:** Again, sir, as I said earlier in conjunction with Mr. Tabuns’s question, I’m not certain who said that based on the way that the note is written. But as I said, in my mind this was a decision that was ultimately made by at least two, namely the Premier and the Minister of Energy.

**Mr. Victor Fedeli:** Okay. That segues into the next one. You’re saying that the decision was made by the Premier and the Minister of Energy. That’s the decision to cancel.

**Mr. Jamison Steeve:** The decision to issue the minister’s directive to not proceed with Oakville. I believe the directive goes from the minister to the OPA.

**Mr. Victor Fedeli:** On the third page in this—

**Mr. Jamison Steeve:** Sorry, page 3?

**Mr. Victor Fedeli:** Yes, right at the top. We’re talking about the second meeting with Brad Duguid, Sean Mullin, David Lindsay, etc.

**Mr. Jamison Steeve:** Yes.

**Mr. Victor Fedeli:** And it talks about how TransCanada “blew a gasket.” They’re suggesting that, “We already have a deal.” They’re talking to the minister: “We already have a deal—go talk to your bosses.” So if the minister didn’t know about the deal, who was making these decisions then?

**Mr. Jamison Steeve:** I was not at this meeting, nor was I a part of these notes, so I can’t speak to that issue. But I was working under the understanding that both the minister and the Premier were taking this direction. I can’t speak to the note.

**Mr. Victor Fedeli:** So are you surprised, then, that TransCanada felt, when they “blew a gasket,” that they already had a deal and suggested to the minister that he go talk to his boss? You’re surprised at that revelation?

**Mr. Jamison Steeve:** I’m neither surprised nor otherwise, sir, because it’s a note from TransCanada. I don’t know actually what happened in the meeting. So it’s difficult for me to say whether I’m surprised or not.

**Mr. Victor Fedeli:** So who did make the deal, then, with TransCanada?

**Mr. Jamison Steeve:** First of all, there was no deal with TransCanada. There was a communication to TransCanada that we would not be proceeding with the Oakville gas plant. As I stated earlier, I had communicated that to them in a meeting on October 1.

**Mr. Victor Fedeli:** On October 1 you told them that. On October 5 there was the meeting where they say, “Go talk to your bosses.” Are you suggesting, then, that it was you who gave them the—when they say, “We already have a deal,” is that the deal?

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**Mr. Jamison Steeve:** You'd have to ask someone from TransCanada, sir. I'm not aware of what—I was answering your previous question as far as my communications with TransCanada, what deal they were referring to or the blowing of a gasket. I wasn't at the meeting, and these aren't my notes.

**Mr. Victor Fedeli:** Okay. When you met with TransCanada, where did that or those meetings take place?

**Mr. Jamison Steeve:** I believe all of those meetings took place in my office here at the Legislature.

**Mr. Victor Fedeli:** What room number is that?

**Mr. Jamison Steeve:** Oh, 272.

**Mr. Victor Fedeli:** Did any of those meetings take place in 281?

**Mr. Jamison Steeve:** I'm sorry, sir, 281 being the Premier's boardroom?

**Mr. Victor Fedeli:** The Premier's office.

**Mr. Jamison Steeve:** No.

**Mr. Victor Fedeli:** None of the meetings between you and TransCanada took place in the Premier's boardroom, room 281?

**Mr. Jamison Steeve:** Not to my recollection, sir. I believe they all took place in my room, and I apologize if I'm getting the room number wrong. It's either 272 or 273.

**Mr. Victor Fedeli:** But not in the Premier's boardroom?

**Mr. Jamison Steeve:** No, not to my recollection.

**Mr. Victor Fedeli:** So you were negotiating with TransCanada or brought news to TransCanada. Who asked you to engage in those conversations with TransCanada?

**Mr. Jamison Steeve:** First of all, sir, just for a point of clarity, as I said both in my opening statement and in answers to questions, I was never negotiating with TransCanada. I was having discussions with them about what options might be possible—

**Mr. Victor Fedeli:** Okay. So who—

**Mr. Jamison Steeve:**—and as I said earlier to the question, my initial conversations were with other members of senior staff; namely Sean Mullin, Chris Morley, Dave Gene and myself, as well as the Premier, who was aware that I was going into discussions with TransCanada to explore what options might be possible.

**Mr. Victor Fedeli:** So my original question, then, if I can mildly reword it is, who ordered you to engage in conversations with TransCanada?

**Mr. Jamison Steeve:** A consensus, sir, between both the senior staff and the Premier.

**Mr. Victor Fedeli:** I'm sorry?

**Mr. Jamison Steeve:** Between senior staff and the Premier.

**Mr. Victor Fedeli:** And the Premier. Okay. There was a \$712-million offer made to TransCanada. Are you familiar with that?

**Mr. Jamison Steeve:** I am not.

**Mr. Victor Fedeli:** When did you leave the negotiations again?

**Mr. Jamison Steeve:** My primary role ended as of early October, and then, as I said, I had some minor involvement in the settlement discussions. I had, I believe, one further meeting with TransCanada, along with other members of senior staff. At that point the negotiation was turned over primarily to, I believe, the OPA and, as I said, I believe the Ministry of Energy.

**Mr. Victor Fedeli:** Can you just tell me the dates again? Earlier, you said you'd first got involved in June. Was it 2010?

**Mr. Jamison Steeve:** Correct.

**Mr. Victor Fedeli:** Till when?

**Mr. Jamison Steeve:** The meetings took place between June 2010 and October 2010, and I believe, sir, I was screened off in the spring of 2011. My best recollection is, in and around April 2011.

**Mr. Victor Fedeli:** Okay. So in and around April also was the time there was the \$712-million offer to TransCanada. You're saying you've never seen that offer?

**Mr. Jamison Steeve:** I have never seen that offer.

**Mr. Victor Fedeli:** Okay. Do you know anything about the costs? When you were having consultations with TransCanada, did you know anything about the costs to cancel then?

**Mr. Jamison Steeve:** In our conversations with TransCanada, they raised issues of costs around transmission that might be required, but costs associated with the contract were beyond my purview since the contract was between the OPA and TransCanada.

**Mr. Victor Fedeli:** Who was your main point of contact in the Minister of Energy's office?

**Mr. Jamison Steeve:** The main point of contact would have been from Sean Mullin to Craig MacLennan, who was the chief of staff.

**Mr. Victor Fedeli:** From Sean Mullin to Craig—

**Mr. Jamison Steeve:** MacLennan.

**Mr. Victor Fedeli:** MacLennan. So you had no communication with the Premier about any costs of cancelling TransCanada?

**Mr. Jamison Steeve:** No, sir. In the final meeting before I met with TransCanada on October 1, I did meet with the Premier, and I believe it was in and around that date—so the last week of September, first week of October—wherein the Premier directed me to go forward and advise TransCanada that we would be issuing the minister's directive. At that point, he asked if we had any certainty as to the cost of not moving forward with Oakville, and I was unable to provide him with certainty on that. As I said before, there was uncertainty as it related to costs. It was not to be unexpected, since it was going to be the subject of ongoing negotiation and mitigation by both parties.

**Mr. Victor Fedeli:** I guess, then, a comment that I would make—this is a \$1.2-billion deal to cancel without knowing what it was going to cost you to cancel. This is what you're telling us. You had gone ahead and given them the word that the contract would be cancelled, but we had no idea at that point what it was going to cost.



**Mr. Jamison Steeve:** No, sir. I challenge the articulation of it in this way. Number one, as I said, there were at least three or four factors that were at play for us. In large part, the alternative was that we had the possibility of a force majeure for a contract that would never be completed, by one bylaw. If you got over that bylaw, I believe the second bylaw was that you could never turn the plant on. So one of the alternatives would be to build a \$1.2-billion plant or a \$1.2-billion contract that couldn't be completed.

I think at the end of the day, what we thought was that there were two very motivated parties that would be able to minimize the costs. On the one hand, you had the government that did not want to get into protracted litigation with a significant energy supplier, as well as trying to minimize costs on behalf of Ontario taxpayers. On the other side, you had TransCanada, which had expressed, throughout my discussions with them, no desire to go to litigation, number one.

Number two, I think the issue of gas plants for TransCanada—they had raised it with us. The issue of safety was one that was starting to hurt the issue of gas. We are getting to the point in this province where there is no acceptable form of energy in the public debate. I think we wanted to make sure that gas plants were something that we could move forward with in the future.

Thirdly, TransCanada had a number of issues around the world. They didn't want to create another one here in Ontario.

Lastly, they had a long-standing relationship with Ontario. So all signs pointed to, while there was uncertainty around costs, that both the OPA and TransCanada would be able to get to a good place.

**Mr. Victor Fedeli:** In the discussion with TransCanada, who was the ultimate messenger to TransCanada, telling them that the power plant was cancelled?

**Mr. Jamison Steeve:** No one said the power plant was cancelled. As I said, sir, it was me on October 1 giving them the word that, as a result of our looking at the long-term energy plan—

**Mr. Victor Fedeli:** But there was a minister's directive to cancel the plant.

**Mr. Jamison Steeve:** A minister's directive to not move forward with Oakville, yes.

**Mr. Victor Fedeli:** So were you the messenger to TransCanada that there was a minister's directive not to move forward with TransCanada?

**Mr. Jamison Steeve:** That's correct.

**Mr. Victor Fedeli:** It's another way of cancelling the plant.

**Mr. Jamison Steeve:** Correct.

**Mr. Victor Fedeli:** When you spoke with the Premier—how often would you have spoken with the Premier about the cancellation of Oakville?

**Mr. Jamison Steeve:** My recollection is that I had four conversations with the Premier about the gas plant between June and October, as I said previously, first in advance of my initial meeting with TransCanada so that

he was aware and gave the go-ahead so that I could have those conversations.

Secondly, I believe I followed up with him. My recollection, sir, is after that July 15 meeting, obviously one of the necessary check-backs in order to try to deliver a decision to TransCanada in advance of July was whether the Premier was comfortable with one or both of the options. At that time, the Premier was a little more comfortable with actually trying to move forward with Oakville because of the energy need. At that point, we still had advice coming from the energy plan that said we needed the plant in Oakville, so to continue to explore those options. I believe after that point I asked Sean Mullin to look even further into what legislative or order-in-council options we might have in addressing the bylaw.

My third meeting, I believe, was in September with the Premier, and at that point he had increasing sympathy for the argument that was being put forward by MPP Flynn around the regulatory environment. It was getting harder and harder to explain a 550-metre setback in the Green Energy Act for wind turbines in the face of—I'm sorry; I'm looking at Mr. Tabuns because he made the very argument in the House, and it's one that I think the Premier started to feel. Either it was difficult to explain locally, or from a legislation perspective it starts to threaten the sanctity of a signature bill.

**Mr. Victor Fedeli:** So when you informed TransCanada of the minister's directive not to proceed, where did you do that?

**Mr. Jamison Steeve:** I did it in my office.

**Mr. Victor Fedeli:** In your office. Okay.

**Mr. Jamison Steeve:** If I can, sir, because I haven't really—I'm answering direct questions. Prior to my meeting with TransCanada, I met with both Craig MacLennan and Deputy Minister Lindsay—going back to the question of, "Who have you communicated with?" Obviously, senior staff was on side, as well as the Premier, telling me that I should go forward.

I met with Deputy Minister Lindsay and Craig MacLennan, and we discussed what points I needed to make sure I made clear to them and, I believe as I said in my opening statement, a couple of things: (1) that we weren't proceeding, that we were issuing a minister's directive to not proceed with Oakville, and (2) that they consider not pursuing litigation at this time so that (3) they could enter into proper negotiations, since ours were without-prejudice discussions, around the contract and the settlement thereof with the OPA.

**Mr. Victor Fedeli:** Again, the date that TransCanada received that news from you?

**Mr. Jamison Steeve:** I'm referring, I guess, to the note that has been provided to me. I believe it is October 1, 2010.

**Mr. Victor Fedeli:** When did your office or the government's office let the OPA know that the Oakville plant was going to be cancelled?

**Mr. Jamison Steeve:** I did not have that direct communication with the OPA. I believe it was either one

or both of Sean Mullin and Craig MacLennan, but I can't speak to the date, as I—

**Mr. Victor Fedeli:** You can't speak at all to the date within the month?

**Mr. Jamison Steeve:** No, sir, I can't, as far as when that was made.

**Mr. Victor Fedeli:** Was there political staff other than the people that you mentioned involved, other than Sean Mullin and Craig MacLennan? Are there any other political staff that were involved or at these meetings?

**Mr. Jamison Steeve:** There were no other political staff at the meetings with TransCanada, no. I'm trying to be helpful and answer your question fully; what do you mean by "involved," sir?

**Mr. Victor Fedeli:** At the meetings; in attendance.

**Mr. Jamison Steeve:** No, it was just Sean Mullin and I at those meetings with TransCanada from June 2010 to October 2010.

**Mr. Victor Fedeli:** Alex Pourbaix: He's with TransCanada?

**Mr. Jamison Steeve:** I believe he's the CEO of TransCanada.

**Mr. Victor Fedeli:** Girling?

**Mr. Jamison Steeve:** I believe Mr. Girling is—

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Jamison Steeve:** If I call correctly, he was the gentlemen who came to the final meeting, and I believe he is—he might be the international CEO, and Alex Pourbaix is the national CEO. The final meeting, sir, I believe Mr. Girling was in town. It was more of a stop-in/shaking of hands rather than a formal meeting, if I recall correctly.

**Mr. Victor Fedeli:** We hear a little bit about Project Vapour. Do you know what that refers to?

**Mr. Jamison Steeve:** I don't recall, sir. No.

**Mr. Victor Fedeli:** Thank you, Chair.

**The Chair (Mr. Shafiq Qaadri):** To the NDP side: 10 minutes, Mr. Tabuns.

**Mr. Peter Tabuns:** I'm going to start by moving a motion. I move that all documents pertaining to meetings between Mr. Jamison Steeve and TransCanada which are now in the possession of the legal counsel of the government be tabled immediately to the Standing Committee on Justice Policy. I hope we could pass that expeditiously.

**The Chair (Mr. Shafiq Qaadri):** We need copies of that. We'll need to take a five-minute recess to deliberate on this.

*The committee recessed from 1603 to 1609.*

**The Chair (Mr. Shafiq Qaadri):** Thank you, colleagues. The motion is duly in order once the couple of words are added. Yes, Ms. Cansfield?

**Mrs. Donna H. Cansfield:** Chair, can I just ask two questions? One is, to whom is this request being made? "I move that all documents"—to whom is that being made? Secondly, remember the time frame. We talked about this before. What's the time frame that you're looking at? October to October?

**The Chair (Mr. Shafiq Qaadri):** Once again, the motion is in order. The floor is now open for discussion. This is the discussion. Go ahead, Mr. Tabuns.

**Mr. Peter Tabuns:** Mr. Steeve has said that he had five meetings with TransCanada Enterprises. I'm relying on notes that are a summary of statements by TCE, rather than his notes. He kept notes at the time. During his testimony, I indicated an interest in those notes. I'm asking that those notes, which he turned over to legal counsel and are no longer in his possession, be turned over to this committee.

**Mrs. Donna H. Cansfield:** That's fine. That just clarifies it for me, Peter, that that's the time frame you're looking at, those five meetings. That's terrific. It's really the ministry legal department, whoever it is, and Cabinet Office—

**Mr. Peter Tabuns:** Because it wasn't clear, and the witness couldn't be clear, and I understand you're not certain which department the legal counsel is serving, we'll leave it general. I think the Premier's office will be able to sort this out.

**The Chair (Mr. Shafiq Qaadri):** First of all, the request can go forward, and we'll await the response.

Is there any further discussion on this before we vote on this motion? Mr. Delaney.

**Mr. Bob Delaney:** Chair, just a clarification on the word "immediately." Perhaps Mr. Tabuns would like to be a little bit more specific. In other words, they're not forthcoming in the next 30 seconds after the motion, should it be passed in its present form as adopted. "Immediately"—what is acceptable in terms of "immediately," so that whoever has to go and search for them—

**Mr. Peter Tabuns:** Mr. Delaney?

**Mr. Bob Delaney:** Yes?

**Mr. Peter Tabuns:** As soon as possible.

**Mr. Bob Delaney:** That's fine. That's all we needed.

**The Chair (Mr. Shafiq Qaadri):** All right, thank you. Are there any further comments?

If not, we'll proceed to the vote. Those in favour of the motion as read and debated? Those opposed? Motion duly carried.

We'll now return to your questioning. Mr. Tabuns, you have, I think, 7.5 minutes left. Please proceed.

**Mr. Peter Tabuns:** TransCanada Enterprises came to you in June 2010. Why did you not simply refer them back to the Ontario Power Authority, given that the OPA had jurisdiction?

**Mr. Jamison Steeve:** A two-part answer to your question: Number one, the OPA has jurisdiction over the contract between TransCanada and the OPA, but the government retains jurisdiction over the ministerial directive.

When TransCanada came to me, there were at least two options on the table for the government at that point. Number one is legislation, which would be beyond the scope of the OPA, legislation being we had the bylaw that was causing some concern and possibly preventing them from completing the contract. That would be a government decision, and therefore it was properly



within my purview as principal secretary and that of the government, the decisions of both the Premier and the minister.

Secondly, the ministerial directive, which I understood is a power that the minister has to direct the OPA not to proceed, would also be within the proper authority of the minister and the government.

**Mr. Peter Tabuns:** So if it was a ministerial directive, why you, and why not the minister?

**Mr. Jamison Steeve:** Because at that point, we were also going back and having the conversations with the minister's office, so the minister's office and the minister were apprised of the conversations.

There are times when I will take meetings with—I had taken meetings with stakeholders and/or other people in an effort to resolve a situation where, at that point, the minister's office hadn't been able to move things forward.

**Mr. Peter Tabuns:** Mr. Steeve, I'm having difficulty with some of your testimony. You've been telling us—and maybe I misunderstood, so clarity would be useful—that TransCanada was faced with a problem of force majeure. They could not deliver a plant, and possibly they couldn't operate a plant, given the bylaws and the interim control bylaw brought forward by Oakville.

**Mr. Jamison Steeve:** That was my understanding. That was raised by TransCanada in their meetings with me, yes.

**Mr. Peter Tabuns:** So any private company building a power plant is taking a risk. That's why they get paid big bucks. They are coming to you to bail them out. They couldn't build this plant; you had a political problem with the plant. Kevin Flynn—God forbid—would have to vote against the government on a bill. Why did you bail them out? Why are we spending \$600 million-plus for a plant that couldn't be built?

**Mr. Jamison Steeve:** I can't speak to the cost, sir, of the plant, but I think it was not just an issue of bailing out TransCanada. That wasn't actually any part of the matrix that I articulated earlier about why we weren't proceeding with building in Oakville.

As I say, it was at least four factors. Number one was the fact that we had significant local concern, and a consensus had built with opposition parties, the local MPP and the local community.

Number two: No doubt, the issue of the bylaws was a part of this. I'm assuming that part of the reason that TransCanada came forward is that they were trying to get both the OPA and the government to do everything within their power to allow them to continue and perform the contract.

Number three: As I have previously stated, another factor was the regulatory environment that had been created by both the Green Energy Act and this.

And then lastly, in the formulation of the long-term energy plan, the power was no longer required in the timeline and in the location that was put forward.

To your question, number one, I can't speak to the cost, at the end of the day, of what the decision ultimately

cost to the government. But number two is, at no point was there a decision made to bail out TransCanada.

**Mr. Peter Tabuns:** But in fact, if they couldn't build the plant and they came to you—not to the contract holder but to the government, to say, "We need a political solution here because we can't go forward," and what you come back with is, "Well, we're not willing to go through this fight with the population. Mr. Flynn is going to have a problem here. Force majeure is force majeure. You can't proceed. You've encountered a legislative problem that blocks you. That's the risk you take in business."

I don't understand why we are on the hook—the public, the people of Ontario—for a company that took a risk and found that the regulatory environment was not there to proceed.

**Mr. Jamison Steeve:** Two aspects: Number one, I don't know if they ever raised the issue with the OPA, to your point about whether they took that to those folks with whom they had the contract.

**Mr. Peter Tabuns:** I intend to find out.

**Mr. Jamison Steeve:** I can't speak to that issue. Secondly, with respect to coming to us, I never got the instinct that they were looking for a "political solution." One of the options they put forward was a legislative solution, not that that's—I'm making a distinction that they were looking for legislation over the bylaw. Obviously, that would require a political decision.

**Mr. Peter Tabuns:** Yes, they are intertwined.

**Mr. Jamison Steeve:** Absolutely. I suppose, sir, as I have left this place, I have noticed from time to time the term "political" being used in a variety of ways, so I'm just trying to—for example, even in Mr. Delaney's questions there was the notion of Oakville being a campaign decision. It has become part of the popular lore when it was made some 12 months in advance.

**Mr. Peter Tabuns:** The realities of local opposition, of the Green Energy Act having been passed with a 550-metre setback for windmills: All those things were known to the OPA and the government before a contract was signed.

**Mr. Jamison Steeve:** I can't speak to that, sir. I believe the original—I can't remember the timing, to be honest, of the original contract between the OPA—

**The Chair (Mr. Shafiq Qaadri):** About a minute.

**Mr. Jamison Steeve:** —and TransCanada, but if I recall, the Green Energy Act was introduced in spring of 2009. I'm not sure when the contract was, and the legislation didn't pass, I would imagine, until early 2010.

**Mr. Peter Tabuns:** I'll check further on that.

**Mr. Jamison Steeve:** I would have imagined, actually, that the contract came before the passage of the Green Energy Act. That would be my estimate.

**Mr. Peter Tabuns:** I'll check further on that, then.

The suggestion that the minister was part of the decision-making—TransCanada Enterprises represented to Ministry of Energy lawyers that, in fact, the decision was made with the minister not in the loop. Can you



confirm that, the decision to proceed and not have a plant here?

**Mr. Jamison Steeve:** As I said, I would point to two things, sir. Number one, I believe Minister Duguid has made public comments that he made the decision.

**Mr. Peter Tabuns:** Yes.

**Mr. Jamison Steeve:** I believe that's the case. And secondly, I met with both his chief of staff and his deputy minister—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns. We'll move to the government side. Ten minutes, Ms. Cansfield.

**Mrs. Donna H. Cansfield:** Thank you. Hi, Jamison. It's nice to see you. I want to say thank you for your many hours of wise counsel as principal secretary.

**Mr. Jamison Steeve:** Thank you.

**Mrs. Donna H. Cansfield:** Certainly you have helped many of us come to some good decisions.

I just wanted to do a couple of things. One, just to put it sort of clear in my mind because there's been some discussion around the force majeure, my understanding is that the contract was signed and then Oakville passed their bylaws. So that's how it forced that particular issue, where they couldn't build. They had purchased the land with the understanding that they could. It's not all that dissimilar from Mississauga inasmuch as the official plan had zoned the land as industrial, commercial and electrical—that had been purchased. The OMB upheld that because you can't change your mind after the fact, and it forced the same sort of thing.

I think that sort of helps to clarify, but it also brings a real issue around the siting.

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Part of our responsibility or the responsibility of the committee is to really learn how we could do this better. The fact of the matter is, we are going to need power plants in the future, and hopefully they're going to be more distributed energy, not the great, large 900 megawatts. But even still, even small ones, you always get into the situation where people just don't want it in their backyard, and that's understandable. So there have to be provisions that are put in place that speak to setbacks, official plans, municipalities being involved, consultation. I mean, how many times have we been out to consult with people and we just get it dead wrong? We're not really, in this great age of communication, the best consultation people in the world, and I say that of all governments, having been around for about 25 years in this field.

So Jamison, you've been around too. What have you learned? How do you think we could move forward better, knowing we're going to have to have power plants and wind turbines and solar and whatever? What are the things you think we could learn from that?

**Mr. Jamison Steeve:** Well, two things. First of all, you have far more knowledge of force majeure and how that kind of came about. As I say, my knowledge of that issue was just when TransCanada raised it with me.

As far as what could be learned from it, it's always difficult for the former staffer to say, but one would imagine that a great issue for a minority Parliament to try to resolve would actually be what type of community consultation needs to be completed in advance of the siting of a gas plant. You could even extend that. If I recall correctly, there were multiple commitments made by parties around gravel pits during the last campaign. The siting of these issues—be it natural resources, gas plants, nuclear plants, wind turbines—are of significance. I don't claim to have any great wisdom or knowledge, and I would rather go to those—I'll just try to go back to my roots—MPPs who could come up with how you move this forward.

Again, I had a chance to read some of the articles and a little bit of the transcript, as much as possible, from Ms. Butler's testimony. At the heart of some of Mr. Tabuns's questions, I think there is a legitimate question to be asked from a public policy perspective: When you are tasked as the OPA to properly go forward and contract and plan energy, sometimes that comes up against real people, and how you mesh those two things together, along with a political responsibility, is a real challenge. So involving the OPA and those communities in that, I think, is necessary.

On the other side of it, if you drive—sorry, Ms. Cansfield, I'm trying not to give a speech, but if you drive around the city right now, there are a number of signs up about what people don't want.

**Mrs. Donna H. Cansfield:** That's right.

**Mr. Jamison Steeve:** No casino, no diesel train, save public health care, which I didn't know was actually currently being challenged. There are a number of things that people don't want to see happen in their communities. But we also need power, so how do you get to a place where you can mix both the energy needs of the province along with the local concerns of the community?

I'm sorry, that's not a great answer for you, but I think it's something that I would encourage. There are certain things that actually might be better solved by a minority Parliament, and this is an issue that I think both the Progressive Conservatives and the NDP have taken some strong stances on. Particularly in the Green Energy Act, the conversation was around the municipal override, and that was something that some folks—particularly, I believe, within the Progressive Conservative caucus—had concerns with. So maybe it's something that all three parties could get together and determine what the best way forward for siting would be.

**Mrs. Donna H. Cansfield:** It certainly could be part of the responsibility of this committee because it's not restricted to a particular power plant. I mean, it's right across Ontario. Whether it's transmission or it's power generation of any description, you're going to have to have it somewhere in order to keep the lights on. What lessons can we learn from the two power plants in particular that we could draw from the conversations we did ultimately have with the community? At the end of



the day, all three parties said they'd cancel it. You read the clippings; I read the clippings. I was there during those campaigns when even my opponent was cancelling everything. Fair enough.

But at the same time, we're all going to end up in a situation, regardless of who was successful in government, and still deal with the same issue: How do we move forward and make sure that we do, as you say, our fiduciary responsibility of keeping the lights on, at the same time dealing with public scrutiny, public understanding?

I do think there are lessons to be learned from this that we can hopefully draw out of the conversations we're having with all the witnesses and be able to put forward into some pretty solid recommendations coming and going forward that are meaningful, make a difference and hopefully can communicate.

**Mr. Jamison Steeve:** And if I may, one of the issues that was raised to me before, I think by both of the other parties, is about why I got involved. There were extensive efforts, I believe both by TransCanada and the OPA, from the date of the awarding of the contract—which, as Mr. Tabuns and I said—not quite sure when that was—until my involvement that were ultimately unsuccessful. If anything, the community opposition was rising. At the same time, if I remember correctly, there were other communities clamouring to get the energy moved to their location as well. So maybe there's an ability to find willing host communities, but that comes with a cost as well, and transmission.

I think it's larger than just a not-in-my-backyard issue. I think there are broader concerns, and obviously energy policy is an issue that all three parties, when they were in government, wrestled with, shall we say. I think everyone kind of dealt with similar challenges. It is a file where both social and economic energy needs all hit and it causes concerns, whether it's an attempt to privatize or it's an attempt to put a plant in a particular location.

**Mrs. Donna H. Cansfield:** You're absolutely right, because this file started in 1999. Thank you.

**The Chair (Mr. Shafiq Qaadri):** Thanks to the government side. Mr. Leone: final 10 minutes.

**Mr. Rob Leone:** Thank you, Mr. Steeve, for your testimony to this point. Can you remind me again when you were employed as the principal secretary?

**Mr. Jamison Steeve:** Sure. I was employed, I believe, in the final week of June. That is when I moved over to the principal secretary, and I was there—sorry; of 2008—until the end of June 2012.

**Mr. Rob Leone:** End of June 2012?

**Mr. Jamison Steeve:** Correct.

**Mr. Rob Leone:** All right. So you were involved when we first started asking for documents in the estimates committee. You were principal secretary at that time?

**Mr. Jamison Steeve:** I was employed, yes.

**Mr. Rob Leone:** My understanding of your position is that you were partially responsible for issues management; is that true?

**Mr. Jamison Steeve:** I'm not responsible, sir.

**Mr. Rob Leone:** But you were involved?

**Mr. Jamison Steeve:** On occasion I was called in to address certain aspects of issues management, but the issues—just so I'm clear—to your question, the issues management team did not report to me.

**Mr. Rob Leone:** Right, but you were involved in sort of the crafting of—or understanding the issues, at least, that cropped up from day to day?

**Mr. Jamison Steeve:** No. I was responsible for managing particular issues as they arose rather than crafting the issue on any particular day. As I said in my opening statement, my communications responsibilities were more focused on strategic communications, which would have been some of the larger pieces like throne speeches and budgets and whatnot.

**Mr. Rob Leone:** Can I share with you a frustration that I'm having on this committee? We have a lot of witnesses who are coming forward who will say things like “I don't recall” or “I can't answer questions” or “I wasn't directly involved” to a number of questions that we're raising on this issue, and it seems like everyone comes before us and says that. So the looming question that I have is, who can answer these questions directly? Do you have any insight on whom we could ask directly who could answer some of these questions that we've seen to date?

**Mr. Jamison Steeve:** I'm sorry, sir. First of all, I hope I've answered every question put to me as directly as possible.

**Mr. Rob Leone:** I believe you have, but you have made, on a number of occasions, comments of “I don't recall” or “I can't answer questions” or things of that nature.

**Mr. Jamison Steeve:** Certainly, sir. I can't answer questions on a file from which I was screened as of the spring of 2011, and there are moments where I can't recall or I can't answer a question about a note in a meeting that I didn't attend.

As far as who is responsible for those items, it depends on the nature of the question. I'm here to help, so I'm happy to answer any question that you have.

**Mr. Rob Leone:** So we are here, and it's the end of March 2013. You left in June 2012, and we're still talking about gas plants. Do you consider this an issues management failure?

**Mr. Jamison Steeve:** I would consider it an opposition success.

**Mr. Rob Leone:** I don't know if that was a political answer or not.

**Mr. Jamison Steeve:** No. I think, from an issues management perspective, at the end of the day the plant was moved, as I understand, to a different location. Litigation was avoided and, to the best of my knowledge, a settlement was reached. So, at least in this instance, I'd say to both the people of Oakville and Mississauga, they were pleased with the resolution of at least those two issues.

1630

From an issues management perspective, I'm sure the government, as well as the opposition members, would



rather be talking about how they're going to craft the budget and move forward on pieces of legislation, but I'll leave that to others to judge whether it has been an issues management failure.

**Mr. Rob Leone:** Sure. We often hear from the government that every party would have been involved in the cancellation of these gas plants, but that's not really the reason why we're here asking the questions that we're asking. The reason why we're here asking questions is because we don't have—still, I think—a final answer on how much these cancellations cost, and that came from a very direct question that we asked in the estimates committee.

We're also here because of the obstruction. We feel that there has been obstruction in terms of the release of documents to this committee.

Now, given that those are the two pressing questions, when you left in June 2012, did you have an idea of how much this would cost?

**Mr. Jamison Steeve:** A two-part answer: Number one was with respect to Oakville. I had been screened off the file in, as I said, spring, and I believe it was April 2011. So I hadn't had any interactions on that file, so I did not know how negotiations were going or what the cost might be.

As far as Mississauga, as I stated in my opening statement, ultimately that file turned back over to Chris Morley upon his return, when I was no longer acting chief of staff.

As far as documents at that time, if I recall correctly, the original request for documents was from the Ministry of Energy, the Minister of Energy's office and the OPA. I left in June, and as always, in my time in office, any time documents were requested of me, I produced them.

**Mr. Rob Leone:** So we have an estimate that—well, we still don't have the costs. Had you been involved in, and still been in power—I know that the Premier announced his intention to resign on October 15, 2012. But there has been a line of logic or a line of thinking that would have suggested that had the government come clean with their numbers last fall, and had they released all the documents, neither the Premier would have had to resign nor the former energy minister. What do you think about that line of thought?

**Mr. Jamison Steeve:** I can't speak to the rationale as to why either the Minister of Energy or the Premier resigned. And to your question, I've never been in power; I worked with a government in power. So I think it's speculation, and I think both men had reasons for why they've chosen to move on from political life.

**Mr. Rob Leone:** But do you think, had the government and those in charge of making these decisions come clean in October, would that have given them sufficient amount of leeway to leave this issue behind? Do you think that would have been a better course of action?

**Mr. Jamison Steeve:** Monday morning quarterbacking has never been my style with my fellow staff. I'd go back to my original comment that I think both opposition parties are very effective in what they do on a

day-to-day basis, so I don't think the release of documents would have necessarily ended the pursuit of either the Premier or the minister.

**Mr. Rob Leone:** But at the end of the day—again, I'll restate: The reason why we're here is because there has been a failure to disclose. I think it's a colossal failure to disclose. I've not heard anybody in the government or who has been involved in government—and you were involved in a pretty important role, as a political staffer—apologize, first of all, for not disclosing information appropriately, not coming clean with the exact, precise cost. We don't need 56,000 pages of documents to basically sum up in a couple of pages, or a couple of lines on a spreadsheet, how much these cancellations cost.

And we don't know, again, who orchestrated, in our view, the cover-up of the documents or the cover-up. And the fact that we still don't have that information, the fact that there's still the impression that the government is trying to hide something, means that we're here in March 2013 still asking questions about this file.

It seems to me that, if the government just came clean, I think we could all move on to other things, but the fact is that they still haven't done that. I have to ask, what is being hidden from us, essentially? Why are we still dealing with allegations of obstruction and cover-up?

**Mr. Jamison Steeve:** I'll go back to my opening statement, I suppose, sir. That is, at the time that I left the office, I believe the debate as to the document production was still under way. I don't know if anyone from the government or a staffer has provided an apology, whether that be the minister of the day or Minister Chiarelli now, so you have me at a loss there.

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Jamison Steeve:** I'm under oath, so it's difficult for me to answer a hypothetical question and provide an apology for something that I wasn't involved with. I know you're frustrated by that process.

**Mr. Rob Leone:** I'm not asking for you to give an apology. I'm saying, would you advise the government to do that?

**Mr. Jamison Steeve:** Well, the basis of your question is that they misled and obstructed documents, and I don't know that to be true. Unless I knew that to be true, I couldn't provide them with that advice.

**Mr. Rob Leone:** Mr. Fedeli.

**Mr. Victor Fedeli:** Thank you. So if TransCanada was in trouble on the site, and you determined during that process that Ontario didn't need the power, yet the government sole-sourced a contract and not an RFP, I would go back to Ms. Cansfield's comment about all three parties suggesting a cancellation, but I would ask you about a fiscally correct way and a fiscally incorrect way to cancel. Would you agree, then, that having a replacement site hundreds of miles away, with a requirement for natural gas being shipped so far and transmission—

**The Chair (Mr. Shafiq Qaadri):** I'm sorry, Mr. Fedeli, that question will have to remain rhetorical.

I'd like to thank you, Mr. Steeve, for your presence to this committee and for your undertaking that we'll be



sending communication by letter to you, I guess referring to some of your documents.

Once again, on behalf of the committee, I'd like to thank you not only for your presence but also for your service to the people of Ontario. Thank you. You are officially dismissed.

**Mr. Jamison Steeve:** Thank you for your time.

**Mr. Bob Delaney:** Chair?

**The Chair (Mr. Shafiq Qaadri):** Mr. Delaney.

**Mr. Bob Delaney:** A five-minute recess.

**The Chair (Mr. Shafiq Qaadri):** Is a five-minute recess agreeable?

**Mr. Victor Fedeli:** Could we take a little longer? Is 10 minutes okay?

**The Chair (Mr. Shafiq Qaadri):** A 10-minute recess; fine.

*The committee recessed from 1637 to 1651.*

MR. GREG ROHN

**The Chair (Mr. Shafiq Qaadri):** Colleagues, I call the Standing Committee on Justice Policy back into session. I would now invite our last witness of the day, Mr. Greg Rohn, to please come forward. Please be seated. Mr. Rohn, you are going to be affirmed, and I would invite you to do that right now.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Do you solemnly affirm that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth?

**Mr. Greg Rohn:** I do.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Rohn. You have five minutes for an introductory address, and then you'll have a rotation, as you've seen the protocol. I invite you to begin now.

**Mr. Greg Rohn:** Okay, thank you. I'd like to thank the committee for having me here today to tell a story that has largely been ignored by the media of what happened in Mississauga—the history of the plant.

I hope you don't mind; I made some notes. I spent a lot of hours looking through all my old files and correspondence and newspaper articles over the last couple of weeks to refresh my memory on this whole affair. One thing it did do was reinforce in my mind that sometimes it's best to avert your eyes and put your hand down when people ask for volunteers. This was a long process.

My name is Greg Rohn; I'm a lifelong resident of Etobicoke. I'm married with two kids and a small business man. I've been politically active and community-involved since I was a teenager. I'm one of those people who, when they see something wrong or something they disagree with, gets involved.

One thing I've learned over the years is that the government, in my opinion, relies on the apathy of the people. A lot of people will bitch and complain—sorry for my language—about things, but that's about as far as they'll take it. Most people are way too busy. When a group like ours in Etobicoke-Mississauga gets together,

gets organized, is persistent, the government and the politicians don't really know what to do with us.

CHIP, the Coalition of Homeowners for Intelligent Power, was formed around 2004 or 2005 by a number of like-minded individuals like myself who saw, at the time when these gas plants were being proposed, a very terrible wrong being foisted on our community.

I'd like to stress right here that the key individuals who were with CHIP from the beginning and through all the years until the cancellation and are still involved today do not live in the immediate vicinity of this plant. We were not right downwind of the plant. In fact, most of us were miles away. I live upwind in Etobicoke several miles away from the plant. This issue was brought to my attention, and it just screamed that it was the wrong thing, and I got involved.

I think what I'd like to do today, and what I hope you'll allow me to, is address the oft-used term "NIMBY" and how that basically negates any valid argument that a community may have. I'd like to address the oft-repeated but never proven assertion that this was a seat-saving cancellation. I'd like to refer back to the energy expert whom you had a week or so ago who said several times in his testimony that the OPA's siting process should not be dismissed. If Loreland Avenue in Mississauga is the result of the government's and the OPA's and the energy sector's siting process, then I cannot tell you how vehemently I disagree with that statement and how much that siting process needs to be improved.

My view on energy—I have no background in energy other than what I've learned over the last 10 or 11 years now—is that the government announced the closing of the coal plants and did not have a proper plan in place to replace them. A state of panic ensued. There was last-minute scrambling. The green energy plan was rushed. The OPA was given very broad powers, and everything they did hinged on transmission lines. What they forgot in this whole process was the human element that was involved, and that's where this desperation led to: community questioning and community opposition.

I just thought I'd close my introduction by saying that at the time when this plant was announced, we contacted all of our local politicians—MPPs, MPs, councillors from the cities of Mississauga and Etobicoke—and not one of them had heard of this plant going in before the announcement. That, to me, is indicative of a terrible process, and it really gave us the fuel to start our long battle.

Anyway, I'd be happy to take your questions.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Rohn. We'll now pass it to the government side. Twenty minutes, Ms. Albanese.

**Mrs. Laura Albanese:** Welcome and thank you for being with us this afternoon and for waiting so kindly.

Based on what you were just saying in your testimony, the organization that you belonged to was strongly opposed. I know that you mentioned the reasons why, but could you just summarize for the committee the reason why the organization CHIP was so strongly opposed?



**Mr. Greg Rohn:** Sure. Well, the organization really was a collection of individuals—a number of ratepayer groups in Mississauga and Etobicoke—that of course organized rallies and got a lot of citizen support. When we originally asked for a bump-up to a full environmental assessment, we had 42 points that we were concerned about with regard to this location and this plant. I could summarize all 42, but quite frankly, it was a natural gas power plant on the banks of a sensitive creek watershed and meters from a railway line—we all know that trains don't derail in Mississauga—500 metres upwind of a major hospital and a hospice and 150 metres from the closest home. I mean, we had a picture on our website of a backyard swing with the plant looming in the background. It was absolutely the wrong location from day one. How it ever came into being is something that hopefully this committee, the OPA and whoever is involved can fix in the future.

**Mrs. Laura Albanese:** We have been talking about costs this afternoon, about what the cost of relocating this plant is to the taxpayers of Ontario. In your mind, what would the costs have been to your community if this plant would have moved forward?

**Mr. Greg Rohn:** Well, I'm no expert, again, on health costs and health care issues, but we did have a lot of experts that talked about adding more pollution into the environment. It's probably the most heavily polluted area in the country. What we were faced with all along was the developers' reasoning that this is better than the coal plant at Lakeview. Well, the fact of the matter is that in the immediate area and for the people where this plant was going to be located it would be much worse.

The stacks were a lot shorter than Lakeview. The emissions would blow down on the local neighbourhood, whereas with Lakeview they were tall stacks, and it blew out over the lake. For the citizens of south Etobicoke—and that's another thing that has not been explained properly in the papers. It was really the citizens of Etobicoke that were the main victims of this plant if it went ahead, because the wind blows from Mississauga into Etobicoke.

1700

The problem with natural gas plants—and I know that this has been spoken of before—is that the emissions from these plants are of the smallest particulate matter that gets deep in your lungs: 2.5 microns or lower. All you have to do is look at the gas plant up along the 401 and check the smokestacks out. They've got a lot of yellow gunk on them. That's what would have dropped on our community.

**Mrs. Laura Albanese:** So you represented a large group of residents not only from Mississauga but, as you mentioned, also from Etobicoke. Could you try to put a number on the size of the opposition? Did it start small and then grow—

**Mr. Greg Rohn:** It started small in that we were a bunch of citizens that found out about this plant almost by mistake. Secrecy and the withholding of information and not being forthright with the public were a factor all

the way along in this whole fight. In the beginning, it was small, but then we brought in representatives. We approached all of the local ratepayers' and homeowners' associations in Etobicoke and Mississauga. Our number, when we had our group together, was at least 10,000 homes.

I know in my neighbourhood alone, there were 1,200 homes. When we ran our sign campaign running up to the election, there were way more "Stop the Power Plant" signs than there were election signs.

**Mrs. Laura Albanese:** So you would say that the majority of residents in Mississauga and Etobicoke were opposed to this plant.

**Mr. Greg Rohn:** The ones who knew about it. I didn't have anyone come up to me and say, "This is a great idea"—not one single person in 10 years.

**Mrs. Laura Albanese:** So what was the residents' reaction when the government announced that the plant had been relocated?

**Mr. Greg Rohn:** Elation, tempered by the fact that it was only an election promise.

We then tried to secure the commitment of the opposition as well. All the way along in this battle, we tried to get the opposition to help us out, and it was to no avail. We were ignored by most politicians for years. As we approached the election, we tried to hand the opposition a golden egg of an election issue. We were desperately trying to get them to realize that this was a major issue in those four ridings, and we were rebuffed.

I went up to Tim Hudak at a campaign stop. I introduced myself and I explained that this was major in Etobicoke and Mississauga, in the riding that you're in right now. He brushed me aside and said, "Talk to my handlers." His candidate wouldn't even look me in the eye.

This is the type of reaction we got from the politicians until it was too late. Then they tried to rewrite history with brochures saying they'd been campaigning against it for years and were against it, and it's just not true.

**Mrs. Laura Albanese:** Speaking about the 2011 election promises that you're just mentioning now, it seems that all three parties were then on board with trying to satisfy, let's say, the concerns of the community.

Let's say another party had been elected. Would you have expected them to follow through with their promises?

**Mr. Greg Rohn:** I was 20 feet away from Tim Hudak when he had his meeting with the local candidates outside the site and he finally admitted that the plant was done, that he would cancel it. We couldn't get those exact words out of him for the longest time, so yes.

The NDP were against the plant, but I don't know that we ever got the firm commitment to cancel it.

**Mrs. Laura Albanese:** In the end, do you think the government made the right decision—late but right?

**Mr. Greg Rohn:** It was definitely late. That's a big part of this story: that it should never have been there in the first place. It was the right decision. I don't know that



you could find a worse place for a power plant than where they were going to locate that one. It made no sense at all, and that's what kept us going all those years.

**Mrs. Laura Albanese:** But in your mind, each party made that commitment and would have had the responsibility to follow through on the promise made during the campaign.

**Mr. Greg Rohn:** Correct.

**Mrs. Laura Albanese:** Correct. So it was a political decision, but all parties made that same political decision.

**Mr. Greg Rohn:** Yes, in the end.

**Mrs. Laura Albanese:** I read one press release in which—I don't recall the date, but I believe there was a big red elephant. You complained about the fact that you were disappointed with all the political games that were being played.

**Mr. Greg Rohn:** You know, I come here as a frustrated citizen. I tried for years to get people to help us, and we were, for the most part, largely ignored. We put together what—I obviously have a bias—was just a tremendous request to the Ministry of the Environment for a bump-up to a full environmental

If I can refer to my notes, because I just want to get this right—we had 42 issues we wanted addressed. The director at the Ministry of the Environment ignored 21 of the 42, failed to address 20 of the remaining 21 in any detail or with any supporting facts, and answered one by saying that the developer would have to make a community advisory committee, but he never gave a mandate.

I worked in Etobicoke Centre as we had our last rally, which we can talk about if you're interested. I worked with the PC candidate in Etobicoke Centre, with her campaign, and they didn't know anything about this power plant. So I said, "Here are the issues; here's what you'll want to say if you want to make points with the public, with the voters." I have those emails. Not one Conservative candidate showed up at the rally. The NDP and the Liberals were there. It was very disappointing.

Guys, I don't mean to rail against the Conservative Party here, but afterwards she was campaigning in my neighbourhood. A lot of people know me there. She was going door to door, telling people that I barred her from the meeting, that we didn't let them show up. And then they call me: "This is what she's saying at the door."

I'm frustrated; I'm cynical. I used to be very politically involved. I've worked on leadership campaigns; I've been a delegate at conventions; I've been on riding executives. I don't do any of that anymore. I'm a cynical person. But I still get involved with the community.

**Mrs. Laura Albanese:** You mentioned that you were politically involved since you were a teenager and that when you see an issue that you become passionate about, you still get involved.

I sympathize with you and with the concerns of the residents. I'm just trying to go back and trying to understand how upsetting, let's say, until you got a decision, this whole situation was. In other words, you believe that a right decision was made at the end. I understand that

you say you would have wished that the government would have listened sooner and the politicians would have listened sooner—

**Mr. Greg Rohn:** Right.

**Mrs. Laura Albanese:** —but at the same time, I'm just trying to understand how frustrating that—

**Mr. Greg Rohn:** It was extremely frustrating. Those of us who were there from the beginning spent hundreds and hundreds of hours of our own time. I have a business; I've got two young kids. I don't have time for this. But we did it. I was out of pocket several thousand dollars. This was a commitment we had. We were getting virtually no help.

**Mrs. Laura Albanese:** So in other words, in the end, although the decision was perhaps politically motivated, it was good for the community. It was a good decision.

**Mr. Greg Rohn:** It was absolutely the right decision; there's no question about it. It's a shame that it took that long. It's a shame that it got beyond the initial siting. Somebody should have looked at that site and said, "Wrong. Move on." We tried to convey that information to the government, to whoever would listen to us. Unfortunately, not enough people listened to us.

**Mrs. Laura Albanese:** You also mentioned that the plant was not properly sited from the beginning. Of course, your organization was strongly opposed.

One of the things that we need to do, with this committee in particular, is to come up with some concrete recommendations related to the siting of plants in the future. Do you have any recommendations in that regard?

**Mr. Greg Rohn:** There are certainly areas that are more industrial, that aren't 150 metres from the closest home. Now, I might be dreaming in Technicolor here when, as a citizen, I would love to have some forward-thinking politicians plan 30 or 40 years down the road. If it's all based on transmission lines, maybe we need long-term to put in new transmission lines so that we can put these plants in remote areas and bring the power in.

1710

As a citizen and as a taxpayer, if you explain that to me with a well-thought-out plan and say, "The money that we raise in your taxes is going to create a better energy for the future, for your kids," I'm all for that. Unfortunately, the public is so cynical now, because so much of our money goes right down the drain, and we don't believe that it's going to go to a specific issue like that. I look at transit in Toronto: If somebody had been forward-thinking 30 or 40 years ago and said, "Let's build a subway station every two years," we wouldn't be in a mess transit-wise.

This is what we need. We can't think only about the next election.

**Mrs. Laura Albanese:** Yes, I completely agree with you. I live in the riding where the Eglinton subway was going to be built 20 years ago and where the hole was filled. We're now re-digging again, and we're hoping that we will get an Eglinton crosstown in Toronto, among other transit projects.

As far as local decisions are concerned, what do you think the role of the community should be in decisions



such as this one, in the siting of a plant? What role can the community play in a process such as this one?

**Mr. Greg Rohn:** I think that if the community is brought in at the beginning—first of all, in a location like that, you're not going to get a community supporting you, because it was the wrong location, but we were never against power plants. We were never against power plants in Mississauga or Etobicoke. We were never against any of that. It was strictly the location. It has got to be in the right location, and you've got to bring the community into it. It's a big issue.

I'm not sure what the answer is as to how you gather the community together. We came together because of a mistake. I'm not sure you would have had as strong a group coming forward, willing to help the government figure out how to properly site. The people who were involved in Oakville and the people who were involved in our group are certainly people who know a lot about what went wrong and maybe have ideas of where to go forward, but I think there have to be better locations than where that was. I think you certainly cannot go about it the way that this one happened, where the community was left out until the decision was made and then, all the way along, it was like pulling teeth trying to get information.

To get copies of the environmental screening report that the developers did, they were available in two libraries—hundreds and hundreds of pages. You couldn't take them out and they weren't available online, so somebody would have had to go in there and spend hours and hours in a library. How is that involving the community? That's just secretive, and it's an attempt to frustrate and to stop the community from being involved.

**Mrs. Laura Albanese:** So what I'm reading here is: a more proactive approach, consulting the community early, letting the residents know—you're saying that the residents didn't know, so perhaps engaging the residents—

**Mr. Greg Rohn:** Well, before the site is chosen, I think there should be some consultation—

**Mrs. Laura Albanese:** Yes, before decisions are made.

**Mr. Greg Rohn:** And there were communities out there—as has been stated before by others—that did want these plants. There are complications with some of them, but I think most people are reasonable and, if it's properly presented to them, they will agree that energy is important, that power is important, that we need it and that we're going to have to improve it. All of our infrastructure, like water pipes, everything—these aren't sexy investments, but they're required. It requires tax money, and I think that if we can get away from throwing it down the drain, as I said earlier, and actually have it improving our infrastructure, then people will be all for that.

**Mrs. Laura Albanese:** Thank you. Mr. Chair—

**The Chair (Mr. Shafiq Qaadri):** Two minutes.

**Mrs. Laura Albanese:** I wanted to ask if we could ask Mr. Greg Rohn to follow up and give the committee

a copy of his email exchange with the PC candidate that he referenced earlier. Would that be possible?

**The Chair (Mr. Shafiq Qaadri):** You can ask him.

**Mr. Greg Rohn:** Yes, I can do that.

**Mrs. Laura Albanese:** Would that be possible?

**Mr. Greg Rohn:** Sure.

**Mrs. Laura Albanese:** If you could write that down. Thank you.

Any other recommendations or anything else you would like to share with the committee on future sites and energy infrastructure in the province?

**Mr. Greg Rohn:** One thing I really want to get across here is the term “NIMBY,” because it's just thrown out there, and it's repeated in the media and the talking heads on talk radio. They just—charge the citizens of Mississauga with the cancellation costs. Well, I read, in part of my studying before this—

**The Chair (Mr. Shafiq Qaadri):** About a minute.

**Mr. Greg Rohn:** One minute? I read a definition in a newspaper article that NIMBY is “a natural community response to an ill-conceived and poorly communicated plan.” I guess the flip side of that is if you have a well-conceived and well-communicated plan, you probably won't have as much NIMBY action.

Using “NIMBY” and just dismissing the citizens of Mississauga and Etobicoke really says they had no valid arguments against this. Anyone who mentioned property values in any of our meetings was told to be quiet or leave because we did not want that issue brought up. That wasn't the reason we were doing this. It wasn't about having—I mean, it was for the immediate neighbourhood about this ugly building in their backyard, but it wasn't about property values. It was about the right thing. You're doing the right thing.

**Mrs. Laura Albanese:** Thank you very much.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Rohn. To the PC side, to Mr. Yakabuski. Twenty minutes.

**Mr. John Yakabuski:** Thank you very much, Mr. Rohn, for joining us this afternoon. I sense a great deal of frustration, and I can understand why.

So just to recap, and you may have stated that directly in your initial statement, how long have you been involved with the CHIP organization?

**Mr. Greg Rohn:** I was involved since 2005. The initial group of people got together around 2004—late 2004—but I was a few months after that.

**Mr. John Yakabuski:** So pretty much from the get-go.

**Mr. Greg Rohn:** Yes.

**Mr. John Yakabuski:** The whole purpose of them getting together was to oppose the power plant in Mississauga.

**Mr. Greg Rohn:** That's correct. Initially, there was a plant that was proposed for Applewood that would have been owned by EPCOR. This is before my time, before I knew about this. I do know from hearing from people that EPCOR was very professional in their dealings with the community, that they had a number of community



meetings. Then all of a sudden, the two contracts were awarded to the other proponent, and that came out of left field. So yes, that's about the time I came in.

**Mr. John Yakabuski:** And from the time that it was known where this plant was going to be located, your group was adamantly opposed to it, and clearly there was no—

**Mr. Greg Rohn:** Absolutely. I didn't run across one person in all those years who said, "This is a good idea."

**Mr. John Yakabuski:** So from roughly sometime in 2004 or 2005, or maybe a little later when this location was chosen—I think 2007 was when the building permit was actually issued.

**Mr. Greg Rohn:** I believe that's correct.

**Mr. John Yakabuski:** From that time on, we never had construction begin until 2011.

**Mr. Greg Rohn:** Yes, and we were actually told to lie low, that there were rumours that the developer didn't have the financing. We were told to just lie low. My understanding was that it was just going to go away.

**Mr. John Yakabuski:** But for at least a period of four years, and perhaps before even the 2007 election, your group had been indicating to the government, to the Premier's office and to the Ministry of Energy that you opposed this plant.

**Mr. Greg Rohn:** And the Ministry of Environment, yes.

**Mr. John Yakabuski:** And the Ministry of Environment. So your objections were quite clear and repeated.

**Mr. Greg Rohn:** We put together, as I said, an appeal to have it bumped up to a full environmental assessment. Tony Jones, who is one of my associates in CHIP, took the lead on crafting it. Again, I say I have a personal bias, but it was an excellent document. I don't know how it could have been so blatantly and utterly ignored by the Minister of Environment or the director. Subsequently, I was told that there has never been a bump-up to a full environment assessment ever issued. So we started calling it the ministry of pollution because it was a joke.

**Mr. John Yakabuski:** Basically all of your concerns were ignored.

**Mr. Greg Rohn:** Yes.

**Mr. John Yakabuski:** I've got a couple of—I may quote them directly, or I may paraphrase them. We had your mayor, Her Worship McCallion—

**Mr. Greg Rohn:** Actually, I'm an Etobicoke citizen.  
1720

**Mr. John Yakabuski:** Oh, you're Etobicoke. Okay. Sorry.

**Mr. Greg Rohn:** But, you know, I wish she was my mayor.

**Mr. John Yakabuski:** There you go. I won't comment on that—

**Mr. Greg Rohn:** I'm not being political there. I like Hazel.

**Mr. John Yakabuski:** Well, I think most people do, by the sound of it.

Here are a couple of things that she said when she came for a hearing last week: "Opposition second to

none—citizens, city, hospital—all were opposed." Would you agree with that?

**Mr. Greg Rohn:** Yes, and more—yes.

**Mr. John Yakabuski:** How about this one: "The citizens of Mississauga, the staff, the council, the people were prepared to accept a plant in the right location."

**Mr. Greg Rohn:** Absolutely. As I stated earlier, we were never against power plants. Every one of us realizes we need power and that the infrastructure is crumbling and that we need plants. But you just cannot drop these things right into a residential neighbourhood. It makes no sense at all.

**Mr. John Yakabuski:** "Government knew about Mississauga's opposition from day one"—do you agree with that?

**Mr. Greg Rohn:** Maybe not day one but certainly right from the beginning, yes.

**Mr. John Yakabuski:** I don't know how directly this one might affect you because I don't know how many opportunities you would have had to speak to the minister's office, but, "George Smitherman was very difficult to work with."

**Mr. Greg Rohn:** I've heard.

**Mr. John Yakabuski:** "It should have been cancelled before a permit was issued."

**Mr. Greg Rohn:** A hundred per cent.

**Mr. John Yakabuski:** A hundred per cent.

**Mr. Greg Rohn:** I don't know how a permit got—I know that involves the OMB, and the city of Mississauga was hamstrung in that instance, but that was years after we first brought up a very valid reasoning as to why it shouldn't be there.

**Mr. John Yakabuski:** And I may be going outside what you feel is your field of expertise, but if not, so be it, but I think you know probably enough about what its cost—or at least the stated cost on the part of the government is.

Her Worship said, "The difference between the cost of cancelling the plant before a permit is issued versus when the plant is half up is huge." I don't think that requires expertise; it's probably rather obvious, I would suggest.

**Mr. Greg Rohn:** Right. As far as the plant construction, we had been hearing from and had talked to people in the construction industry, and they were putting up a shell. I think a lot of that construction, in my opinion, was for show and to scare the local residents, because it was concrete and steel. It wasn't complex—involved parts of a power plant. They went straight up. They wanted to have that thing looming over the neighbourhood. It was all part of their negotiations with the government to move it, in my opinion. I don't know exactly what the construction costs are but I was told at one point by someone that it looked like they put about \$30 million into the site. That's what I heard; I can't verify that. I know nothing about the cost of building a structure like they did, but from what I saw, and I was down at that site quite often, it was poured concrete and steel.

**Mr. John Yakabuski:** Has it been dismantled?

**Mr. Greg Rohn:** Not the last time I was there.



**Mr. John Yakabuski:** It has not yet been dismantled?

**Mr. Greg Rohn:** No.

**Mr. John Yakabuski:** Thank you very much. I appreciate your testimony today, and I have no further questions. I'll pass it on to the third party, Chair.

**The Chair (Mr. Shafiq Qaadri):** PC yields its time, then? Fair enough.

*Interjection.*

**Mr. John Yakabuski:** Oh, sorry; I didn't know you wanted—my apologies.

**Mr. Greg Rohn:** No problem.

**The Chair (Mr. Shafiq Qaadri):** You have 13 minutes.

**Mr. Rob Leone:** Just on this report that your group had prepared with respect to an environmental assessment that you claim—and I believe wholeheartedly—was rejected or ignored by the government: Was it rejected or ignored, or both?

**Mr. Greg Rohn:** Both. We got back a form letter that was sent to anyone else, including the city of Mississauga and the Peel region health officer. It was the same letter that everyone got. We had 42 specific points that should have been addressed, and for the most part they weren't even addressed in his response where he said it was not going to be bumped up to an environmental assessment. It was one of the worst responses I could have imagined to all the work we had done. It basically destroyed our faith in the integrity of the public service. To me, it was a sham—the whole thought that you could actually ask for an environmental assessment. That's all we ever really asked for, was a full environmental assessment: "Okay, let's take a look at this. You go through whatever that process involves and tell me afterwards that this is the right place for this plant." There's no way it would pass. Instead, the developer was allowed to do their own screening and, shockingly, it passed.

**Mr. Rob Leone:** So, in this form letter, none of the 42 points were addressed at all?

**Mr. Greg Rohn:** The only one that they addressed specifically was to set up a community advisory committee, but they did not include a mandate for that committee, and we were never approached after that to help form one.

**Mr. Rob Leone:** Do you know if it was created?

**Mr. Greg Rohn:** It didn't involve the community.

**Mr. Rob Leone:** Okay. Would it be possible to table that form letter to the committee for us to have some discussion on it?

**Mr. Greg Rohn:** Sure. Absolutely.

**Mr. Rob Leone:** I know Mr. Yakabuski mentioned about the cancellation costs before permit or after it's being built. Certainly, we would assume—I think all of us would assume—that a cancellation before a permit would be issued would lead to a lower cancellation cost, but the construction of the project continued well past the cancellation and the decision to cancel the gas plants. What did you make of that? What did you make of the fact that every time you drove past the site, the cranes were still hopping along, the dump trucks were still

coming in with the concrete, the steel and so on was being erected? How did that make you and your group feel?

**Mr. Greg Rohn:** The general thought was that—and it worked; it certainly created a lot of fear and anger in the community. I think, quite possibly, it put the government under more duress to come to some sort of a deal. As a businessman, I don't think, once I'm told that it's cancelled, that I'm going to continue pouring millions of dollars into something unless there's some reason or some benefit down the road.

**Mr. Rob Leone:** Did you think, in viewing the continued construction—did that raise fear in your mind that this was just an empty promise?

**Mr. Greg Rohn:** We were getting irate with the local MPPs. What do you tell the citizens who are corresponding with you? I got some really ugly emails: "Thanks a lot; you got this cancellation, but it means nothing. Look, they're still building." Any contact we had was just, "Don't worry about it; it's cancelled," but it's hard to balance the two things together when you're told that it's cancelled and it continues to build. Certainly, the people in the neighbourhood were getting pretty upset.

**Mr. Rob Leone:** I have no further questions at this point in time.

**The Chair (Mr. Shafiq Qaadri):** Thank you. We'll move to the NDP. Monsieur Tabuns or Monsieur Natyshak?

**Mr. Taras Natyshak:** Merci, monsieur le Président.

Thank you, Mr. Rohn, for being here and presenting today. Can you give me again an overview of what the efforts were that CHIP embarked on? I come from the civic movement as well and understand that working, but I'm not familiar specifically with what you started with and what you ended up with in terms of a critical mass. Can you tell us? Give us a little timeline there.

**Mr. Greg Rohn:** We got together in a church basement, I believe, in 2005 and discussed the issue at hand. With relation to the NIMBY part of it, I have some notes from my first meeting, and basically in those notes I said that this group is not NIMBY. In fact, most of them don't live in the exact vicinity of this plant; they're more concerned about the health issues and the secrecy of the whole process. I did write a note at the time that if this plant goes ahead, CHIP's goal is to have it done as safely and as properly as possible. I have the exact note here somewhere.

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Then we attended the open house that the developer put on, which consisted of four easels with pictures on them and a questionnaire that had such thought-provoking questions as "Are you in favour of economic growth and jobs in Mississauga and the GTA?"

**Mr. Taras Natyshak:** Who hosted that event?

**Mr. Greg Rohn:** That was the developer. They were forced—not forced, but as part of the plan or the contract, I think they had to hold regular open houses. That was the only one until, I think, 2011.

It started right off the bat with a lot of secrecy. We tried to get answers. That's when we found out from all



the local politicians that they had known nothing about this plant until the contract was awarded. It got us in action, and we started contacting politicians, contacting opposition, contacting candidates in elections, and then—

**Mr. Taras Natyshak:** So political engagement was a part of the reaction.

**Mr. Greg Rohn:** Yes, and letting them know that this was not right and that we weren't going to sit back. There was a rally in June 2005 that I think about 1,000 people attended, where we allowed the developer to speak first. I think some of their remarks from their representatives at that meeting—one of them was that, "You'll get used to the noise, and you'll better appreciate the trip up to the cottage in Muskoka." It was dismissive of the community and it just got our backs up. That whole process started that year. In 2005, we made the request for the bump-up. In 2006, or four months later, it was denied. We appealed to Minister Broten, the Minister of the Environment at the time, and got no response once again.

**Mr. Taras Natyshak:** Thank you for the work that you have done. Again, having been involved in various capacities over my life, I know how hard it is to mount a campaign and to go against what is seemingly a goliath. I'm wondering if you ever felt as though the forces that you were opposing had mounted a coordinated—or orchestrated a campaign against you, and, other than the proponents, if you felt there were other forces around that assisted them in combatting your group.

**Mr. Greg Rohn:** In my opening statement, I made reference to this. I think that the government was desperate to build these plants because they needed to replace the coal plants. A cancellation at that time—my feeling is that that would have been a real black eye and a step back. Because of the lack of response and the lack of assistance, my feeling was that they were going to plow on until it was built if we didn't strongly oppose it.

**Mr. Taras Natyshak:** So you've learned a lot about the energy file, I would imagine, since beginning this.

**Mr. Greg Rohn:** More than I ever wanted to know.

**Mr. Taras Natyshak:** I've got a couple of questions that I'd love you to explain to me. I'm wondering what your understanding is of the siting process, as it is and as it was for Mississauga.

**Mr. Greg Rohn:** I believe that the proponent, at that point in time, got to choose their own site and that they had to have a site in place and the financing in place to fulfill their contract. The siting process now between Oakville and Mississauga—I don't know that anything has been decided by the government, but I believe that it's not going to be as secretive and a repeat of the process that was used in those two communities.

**Mr. Taras Natyshak:** We would hope. Have you studied the nature of private power deals as opposed to what historically the province has done in terms of public power generation, and potentially have you identified how the influences of private industry play a part in siting or cost or, in this instance, cancellation?

**Mr. Greg Rohn:** I have nothing against the proponent.

They're business people. Their motive is to make a profit, and all the more power to them. I think the fact that they got the contract, the fact that they got that site approved, the fact that they seemingly didn't have to work with the community—and that site was obviously chosen because it was on the grid. I know they had another site earlier, but this one would have been certainly less expensive, I believe, for them to run.

The flipside is that the government runs it. I'm not too certain, with all the examples we've had latterly, that they would do a good job as well. So it's a complex issue.

**Mr. Taras Natyshak:** Obviously, eventually you reached, I guess, a critical mass of support and pressure. Do you think your group and the efforts that your group embarked were one of the reasons that the plant was eventually cancelled?

**Mr. Greg Rohn:** I have no doubt. There's nothing that gets a politician's interest more than a room with 1,000 angry people. One of my neighbourhood associate friends mentioned to me that he thinks the whole thing turned on our sign campaign.

At a certain point, we started calling it the Sherway power plant because Greenfield South and Loreland Avenue meant nothing, especially to the people in Etobicoke. But from Sherway Gardens you could see this thing on the northwest corner of the West Mall and the Queensway looming over the whole area. So we started calling it the Sherway power plant. We went—out of our own pockets—and bought thousands of lawn signs that said in bright red, "Stop the Sherway Power Plant."

We had some great support in the last campaign running up to the election. A lot of younger people came in and set up websites and Twitter and Facebook and all that kind of stuff, and we really started getting the word out there. It was really something to see. I know in my own neighbourhood, I'd be driving to work in the morning, and I would see five times more "Stop the Sherway Power Plant" signs than election signs.

**Mr. Taras Natyshak:** So you were told, "The project's cancelled. You win. Congratulations. It's a victory for all in the community." Yet construction continued. Then you were told to lie low in that period, between the acknowledgement that the plant was cancelled till when we—

**Mr. Greg Rohn:** Yes, we—

**Mr. Taras Natyshak:** Who told you to lie low—

**Mr. Greg Rohn:** We weren't told to lie low at that time. We were told not to worry.

**Mr. Taras Natyshak:** My question is, who was conveying that sense?

**Mr. Greg Rohn:** I got that information from one of my associates in CHIP, Steve Thompson, who took our role as chief bulldog and—

**Mr. Taras Natyshak:** Who was he?

**Mr. Greg Rohn:** He's a resident of Mississauga. He has virtually every politician and bureaucrat's number on his phone. He was our main political advocate.



**Mr. Taras Natyshak:** Was he in discussion with anyone at either the OPA or the ministry's office, or was it secret—

**Mr. Greg Rohn:** I think it may have been through the local MPPs as well. We knew that there were intense negotiations going on behind the scenes. My speculation, as I said earlier, was the reason that construction continued was that it was all part of the negotiation.

**Mr. Taras Natyshak:** I come from Windsor, and we haven't had to deal with an issue similar to this. Although it was obviously an issue that I was aware of simply, I guess, as a taxpayer and, of course, as a partisan. I'm wondering, do you think that this committee and the work that it is doing and embarked on is worthwhile after the fact? Should we continue to find out how much money was spent or is still to be spent? Do you think that we should find out what led to, ultimately, your group having to fight so hard to prove what I think everyone knew? Do you think it's worthwhile for us to be putting this effort in as members?

**Mr. Greg Rohn:** A hundred per cent. As a taxpayer, I'm sick about the amount of money that gets wasted. I know that a lot of it is political and finding out who did what. As Mayor McCallion said, I don't know that that's the number one issue. In my opinion, let's avoid this in the future, and let's figure out how to properly site these plants. Let's figure out how to move forward, and let's have a long-term plan for energy in this province. That would be what I would hope would be the main thing that comes out of this committee.

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**Mr. Taras Natyshak:** Was there an acknowledgement on your part in terms of the group and the political savvy and the nature of the election at that time—was there an acknowledgement that the government was, I guess, so to speak, on the ropes and that they were facing potentially a minority situation or even losing? You were involved politically. My question is a hypothetical to you, but I'm wondering if you think that the cancellation of this plant would have happened had the government had a majority government. Do you think, if they weren't at risk of losing that seat—that feeling was so palpable—do you think they would have cancelled the plant?

**Mr. Greg Rohn:** That's a good question. Obviously, the reason we really ramped up the pressure with the lawn signs, with the second rally that we held in September 2011—we ramped it up because of the election. There were no ifs, ands or buts. This looked like it was going to be our last chance to stop this thing.

So we put pressure on all three parties, and we wanted a commitment from all three parties, and there's no doubt that it became a major issue. We organized campaigns to tie up the Premier's phone in his office—people calling in. We wanted to make sure this became an issue, and unfortunately, with a lot of the candidates, we could hit them over the head with it and they wouldn't admit it was an issue, especially the opposition candidates.

**Mr. Taras Natyshak:** So you were looking for a commitment, and I'm just wondering—you sensed you

got one from the Liberal candidates. At some point, you sensed that your group had at least secured—

**Mr. Greg Rohn:** By that point of the election campaign, the Liberals were strongly on side. The NDP came in and attended our rally. It boggles my mind and befuddles me what happened with the Conservatives, because we were so desperately trying to get them to make this an issue. We were handing them just the greatest election issue in Etobicoke and Mississauga, and they just absolutely rebuffed us and weren't interested, until it was too late.

That's why, when it's repeated in the media that this was a seat-saving thing, I'm not sure that Donna Cansfield, Laurel Broten and Charles Sousa would have been defeated regardless. I think you've got strong name recognition. I've lived in Etobicoke all my life. It's an older community in those two ridings. They vote for the same party all the time. It does change over, but I think, quite frankly, the Conservatives just absolutely blew it in those ridings. And I am a former card-carrying Conservative; it hurts me. They came at it too late, and by that point in time it was too late.

Charles Sousa is extremely well liked. He was an ally of ours. He was one of the only politicians that stood by us from the beginning, even before he was an MPP, and he's well liked in his riding. I'm not sure he could have been beaten.

My thought is that the Conservative candidates were hamstrung by the—up top somewhere was telling them not to comment on this issue, I think. My opinion is that they were trying to let the Liberals hang on their own noose, and quite frankly, they just blew it in that campaign. They absolutely blew it.

**Mr. Taras Natyshak:** Chair, I'll end on that note.

**The Chair (Mr. Shafiq Qadri):** Thank you. Next to the government side, to Mr. Delaney.

**Mr. Bob Delaney:** Thank you, Greg. I think we're into the home stretch now.

**Mr. Greg Rohn:** I can talk all night, so don't worry about me.

**Mr. Bob Delaney:** Okay. I have a few things that I just want to get on the record, and we'll discuss them then.

**Mr. Greg Rohn:** Okay.

**Mr. Bob Delaney:** I think we can agree that everyone wanted that Mississauga power plant cancelled, that the siting was inappropriate. Just before we get into a few questions, I just want to synopsise a few things around that power plant and also set the stage with showing you how difficult the whole process was from the vantage point of being in government.

Now, the site in question was zoned industrial and power plant in the city of Mississauga's official plan going back into the 1990s, certainly 1997, 2003 and 2005, and it specifically met OPA's regulation number 48. So in 2007, after the city of Mississauga brought the matter to the Ontario Municipal Board, the Ontario Municipal Board approved the proposed development by Greenfield South and Eastern Power after they ruled that



the site was indeed zoned for a power plant by the city of Mississauga. Now, the city of Mississauga did go back to the OMB, and they argued that that wasn't their intent, but the fact remained that the site was acceptable under the city's official plan, which made it very difficult for the city of Mississauga to get out of that site location.

Further complicating matters was that, by law, the city of Mississauga had to issue building permits to Greenfield beginning in May 2009. As a result of these permits, the company was able to begin construction activity, legally, in March 2011, which is when it did.

I just wanted to put this on the record, because while local organizations and residents were frustrated that it took so long to cancel the plant—in fact, we in government were frustrated too. I went to the meeting that Charles Sousa attended; I think it was at Iona secondary in—I don't remember whether it was 2010 or 2011. The reality was that the province's actions came about because of the results of the OMB hearing and, very importantly, because the city of Mississauga's official plan had zoned that particular piece of property as being suitable for a power plant. Despite the fact that there wasn't the need for electricity in Ontario's long-term energy plan, the fact was that when the OPA began the process and asked the proponents, "You've got to find a site that's zoned industrial or power plant," Eastern Power and Greenfield South correctly found a site that was zoned industrial or power plant. Whether we felt it was appropriate, inappropriate, right, wrong or otherwise, they did comply with the law and complied with the city of Mississauga's official power plan.

You talked, I think, very tellingly about the work that you did. I just have a couple of clarification questions.

**Mr. Greg Rohn:** Can I just comment on that?

**Mr. Bob Delaney:** Well, just—

**Mr. Greg Rohn:** Okay, go ahead.

**Mr. Bob Delaney:** In the 2010 municipal election, less than a year before the provincial election—were you active in the 2010 municipal election? Did you put up signs, or did you ask the positions of the candidates?

**Mr. Greg Rohn:** We were always asking the positions of candidates. The signs were only in the provincial election.

**Mr. Bob Delaney:** Do you recall the positions of the Mississauga city councillors in wards 1, 2 and 3 in 2010?

**Mr. Greg Rohn:** I'm not familiar with the Mississauga wards, but if you give me names, I might be able—

**Mr. Bob Delaney:** Pat Mullin—

**Mr. Greg Rohn:** Everybody was against the plant—

**Mr. Bob Delaney:** Chris Fonseca, Jim Tovey—

**Mr. Greg Rohn:** Chris was—they were all against the plant. Chris Fonseca wrote to the Minister of the Environment as well.

**Mr. Bob Delaney:** Okay.

**Mr. Greg Rohn:** There was nobody for that plant. My understanding is that, yes, it was zoned. The company went to the OMB or tried to rush it while the city of Mississauga was in the process of trying to rezone that site. There were all these technicalities, but the fact is

that all these technicalities mean nothing if you ignore the human side of this. Fine, maybe my next-door neighbour is zoned to put in a garbage-burning plant, but hopefully you're not going to do that. I know that the company or the proponent somehow got through to the point they did, but how do we stop that, is what we've got to figure out.

**Mr. Bob Delaney:** Hazel was here last week, and Mayor McCallion said—let's use her words exactly—"I think all parties would have cancelled" the plant. Would you agree with that?

**Mr. Greg Rohn:** I would hope so, yes. We did get commitment before, just in the last days of the election.

**Mr. Bob Delaney:** Okay. Was there anything else you wanted to say? You appeared to be eager to make a few more comments.

**Mr. Greg Rohn:** I don't know that we've said that the medical officer of the region of Peel, the medical director of the city of Toronto, the city of Mississauga—there were so many groups opposed to this, and it boggles my mind how seemingly everyone is against this, yet somehow this company can be allowed to build a plant in that location. There is definitely some work to be done on the whole process. There were serious health and safety concerns, yet that was seemingly ignored.

Other than that, I think it would nice if people didn't dismiss everything as NIMBY when there are so many valid reasons and not one good reason for something like this to go ahead. I guess that's my message.

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**Mr. Bob Delaney:** I don't think anyone in the room has—at least those who have been asking you questions—used the expression "NIMBY."

**Mr. Greg Rohn:** No. It's being used all the time. That's a personal pet peeve, I guess. In this world of online comments—and it's a whole new world out there. I try not to read them, but there's a lot of ignorance of the real story. That's what I was hoping I could get across today, that it wasn't just a 2011 uprising of citizens in Mississauga and Etobicoke. This was an eight-year battle that finally—

**Mr. Bob Delaney:** I think we all got that. For that, we thank you. I think Mr. Crack has a question.

**Mr. Greg Rohn:** Okay.

**Le Président (M. Shafiq Qadri):** Monsieur Crack, je passe la parole à vous. Vous avez moins de trois minutes.

**Mr. Grant Crack:** Merci, monsieur le Président. Mr. Rohn, you'd indicated that you were frustrated that Mr. Hudak, the leader of the official opposition, wouldn't give you the time of day when you originally asked for support. Could you give us a time frame as to when that would have happened? Was that it in 2011?

**Mr. Greg Rohn:** In 2011 during the election campaign at a campaign stop in Geoff Janoscik's riding—his candidate. I was very nice. I didn't come railing against him. I just introduced myself and I said, "This is a major, local election issue." They hadn't made any statement on

it. The local candidate had not made any statement on it. It was right in his doorway, this plant.

I was trying to help them. That's how I looked at it all along. I was trying to convey that this is a major issue, and I guess they didn't believe that it was. He basically brushed me aside. I felt like maybe I was the homeless guy walking in off the street upsetting a party. I was, needless to say, a little pissed off.

**Mr. Grant Crack:** Thank you. We don't have much time, so I'll try to ask them quickly. Do you think that the official opposition at the time would not want to get involved because they were riding higher in the polls at that particular point? You had indicated that perhaps that we would hang ourselves or—I can't recall the exact word. But then, as desperation set in, Mr. Hudak came and indicated during the interview that this plant would be “done, done, done.” Do you think that that would have been a politically motivated reaction to what was happening toward the tail end of the campaign?

**Mr. Greg Rohn:** Yes. I had the feeling that the candidates weren't allowed to comment. To me, as a citizen, a voter, I just found it perplexing that such a strong local issue—and afterward, this was the type of thing that went out. All of a sudden, it was a major campaign issue in the last couple of weeks of the election.

**Mr. Grant Crack:** So do you think perhaps it would have been a politically motivated position for a seat-winner as opposed to a seat-saver?

**Mr. Greg Rohn:** I think, in this whole seat-saving scenario, the Conservatives are upset that they didn't clue in to it sooner—

**Le Président (M. Shafiq Qaadri):** Regrettablement, mon ami, votre temps est entièrement expiré. We have 10 minutes left to the PC side.

I'd also just like to direct Hansard that some of the more colourful language of Mr. Rohn, with his permission, can be substituted because the delicate ears of the government and the opposition and even perhaps more the—

**Mr. Greg Rohn:** I apologize.

**Mr. Bob Delaney:** Chair?

**The Chair (Mr. Shafiq Qaadri):** Yes, Mr. Delaney.

**Mr. Bob Delaney:** Just a small point of order. Would Mr. Rohn please table the flyer that he just held up?

**The Chair (Mr. Shafiq Qaadri):** You may ask him. It's not a point of order.

**Mr. Greg Rohn:** Is somebody going to give me a list of things I'm supposed to table at the end?

**The Chair (Mr. Shafiq Qaadri):** To the PC side: Mr. Fedeli. Ten minutes.

**Mr. Victor Fedeli:** Mr. Rohn, thank you again for being here. You spoke of the neighbourhood opposition—how it started small and grew. It got to a point where there were 10,000 homes involved. I just want to mention something, then, from Her Worship Hazel McCallion who was here. I might paraphrase a touch here. She said it took 22 public consultations, hundreds

and thousands of residents opposing this plant. My comment was that it also included outright condemnation from one of Canada's most distinguished mayors to try and stop this plant, for a course of eight years, yet the Liberals went ahead and built it anyway.

You just finished saying, “Nobody was for that plant,” right?

**Mr. Greg Rohn:** Right.

**Mr. Victor Fedeli:** Well, obviously, somebody was, would be my comment to you. The Liberal government did indeed order it to be built, so there was at least one willing party to have it built, so it's not so much that—

**Mr. Greg Rohn:** Fair comment. I know that the local MPP was against it. I don't know how all the inner workings work, but—I put blame on all the parties: the opposition for not helping us, the Liberals for putting it in that place in the first place.

**Mr. Victor Fedeli:** I don't know much about the inner workings either, except the fact that for eight years prominent mayors, citizens who volunteered their time—such as yourself—stood in opposition to this very vocally, and yet the Liberals were the ones who went ahead and built the plant. So there was indeed somebody who wanted the plant there; I would lay it at the feet of the Liberal party.

Chair, thank you very much. We're done our time.

**Mr. Shafiq Qaadri:** Thank you to the PC side; to the NDP. Just before I pass it, I understand that it needs—for the colourful language to be substituted for placeholders, I need the will of the entire committee. May I seek that will? Thank you.

To the NDP, 10 minutes.

**Mr. Peter Tabuns:** Mr. Rohn, thank you for taking the time to be here today, and thank you for the work you did over the years, fighting for the environment in Mississauga and Etobicoke.

I have no questions. I think you present your case clearly today.

**Mr. Greg Rohn:** Thank you.

**Mr. Shafiq Qaadri:** Thank you, Mr. Tabuns, and thanks to you, Mr. Rohn, for not only your presence today but also for your stewardship at the community level. We thank you on behalf of the parliamentary committee.

I understand there's a motion coming forward? Mr. Leone?

**Mr. Rob Leone:** Mr. Chair, I move that this committee sit on April 4 from 9:30 a.m. to 11:15 a.m.

**Mr. Shafiq Qaadri:** It's a motion before the floor. We'll have that in writing, I presume. If there's any discussion on this—if none, we'll proceed. Those in favour of said motion? Those opposed? The motion carries. The committee will sit at that specified date, April 4, 9:30 a.m. to 11:15 a.m.

The committee's adjourned until Thursday.

*The committee adjourned at 1758.*











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## Legislative Assembly of Ontario

Second Session, 40<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 40<sup>e</sup> législature

# Official Report of Debates (Hansard)

Thursday 11 April 2013



# Journal des débats (Hansard)

Jeudi 11 avril 2013

**Standing Committee on  
Justice Policy**

Members' privileges

**Comité permanent  
de la justice**

Privilèges des députés

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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE POLICYCOMITÉ PERMANENT  
DE LA JUSTICE

Thursday 11 April 2013

Jeudi 11 avril 2013

*The committee met at 0830 in room 151.*

## MEMBERS' PRIVILEGES

**The Chair (Mr. Shafiq Qaadri):** Chers collègues, j'appelle à l'ordre cette réunion de notre comité de la justice.

As you know, we're here to consider energy infrastructure hearings. I gratefully acknowledge our interim Clerk, Tonia Grannum, and I would invite the committee to welcome her.

**Mr. Victor Fedeli:** Hoo, hoo, hoo.

**The Chair (Mr. Shafiq Qaadri):** Perhaps in a somewhat more restrained fashion, Mr. Fedeli. In any case, we appreciate your enthusiasm.

CONCERNED HOMEOWNERS  
FOR INTELLIGENT POWER

**The Chair (Mr. Shafiq Qaadri):** We invite the witness to please come forward: Mr. Stephen Thompson, political advocate for Concerned Homeowners for Intelligent Power, and invite you to be sworn in.

**Mr. Bob Delaney:** Chair, just before we get under way, may I ask whether or not the requested documents from witness Bruce Sharp have been submitted at this time?

**The Chair (Mr. Shafiq Qaadri):** Have documents from witness Bruce Sharp, I believe an NDP-summoned energy expert—

**The Clerk Pro Tem (Ms. Tonia Grannum):** Not yet.

**Mr. Bob Delaney:** May I request that the Chair, through the Clerk, send Mr. Sharp a reminder to table the documents that he offered to provide?

**The Chair (Mr. Shafiq Qaadri):** Sure, and that would be, as you know, the second reminder.

With that, Mr. Thompson, I invite you to please be sworn in.

**The Clerk Pro Tem (Ms. Tonia Grannum):** Do you solemnly swear that the evidence you shall give to this committee touching on the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

**Mr. Stephen Thompson:** I do.

**The Chair (Mr. Shafiq Qaadri):** We'll start with the government side: Ms. Albanese, 20 minutes.

**Mrs. Laura Albanese:** Thank you, Chair, and thank you for being with us here, Mr. Thompson.

I think it's been clear that your organization strongly opposed this plant because it was too close to homes and health care facilities and had a negative impact on the environment; that's my understanding. So I'm wondering if you could elaborate on that and also tell us a little bit about what in your mind would have been the cost to the community if the plant had gone ahead.

**Mr. Stephen Thompson:** How do you want me to start, and where do you want me to start?

**Mrs. Laura Albanese:** I did say why I think your organization was opposed. Do you want to elaborate on that and what it meant to the community?

**Mr. Stephen Thompson:** But you understood my role with regard to CHIP, Laura? Do you understand what I was responsible for?

**Mrs. Laura Albanese:** Yes.

**Mr. Stephen Thompson:** So I was responsible for the political advocate. I was the one that got in touch with—

**Mrs. Laura Albanese:** So you would know this very well.

**Mr. Stephen Thompson:** —politicians and members of Parliament and city council members, the mayor. So, as far as the cost to the residents, I don't know what the cost was going to be; I couldn't determine that. I know that the health impact, in the proximity to residential homes and to a hospital, in my opinion would have been a negative aspect. I think it would have been a deterrent to the value of property both in and around the surrounding area.

From what I understand, the city of Mississauga owned land just to the south of the subject property, and they were planning and the proposal is to provide soccer fields, lacrosse fields, baseball diamonds; and having a gas-fired generating station within 100 yards of a sports facility, in my opinion, would have been a deterrent also. You know, there's lots of costs involved in every aspect of that, Laura.

**Mrs. Laura Albanese:** Should we say, then, that the cost would have been a poor quality of life for life?

**Mr. Stephen Thompson:** Well, it's a poor quality no matter which way you look at it. I've been reading through a lot of the transcripts, and what people have been saying, including our own illustrious mayor—and I get a little perturbed at the fact that people are concerned about a power plant being put on Loreland Avenue, and then there was the plant that was supposedly supposed to go in Oakville or the one on Winston Churchill south of

Royal Windsor in Mississauga. This has been going on since 1999 in the city of Mississauga. I got involved in this, Laura, only because of the fact that there was a company called EPCOR that wanted to build a power plant on the corner of Haines and Middlegate, and it just happened to be that my grandfather used to own the property. With that, the residents of Applewood Acres—a number of them phoned me up and asked me to get involved. That was back in 2003. Obviously, I've been doing this a lot longer than most of the people who've been coming to the committee, except for people like Boyd Upper and Rob Burton, who were involved in the 1999 decision when the city of Mississauga had Sithe Corp. come in and propose to put two plants in Mississauga, one on Winston Churchill south of Royal Windsor in Mississauga and the other on Goreway up in Brampton.

**Mrs. Laura Albanese:** But in your opinion, you would agree that the government made the right decision to relocate the power plant?

**Mr. Stephen Thompson:** Absolutely.

**Mrs. Laura Albanese:** So it's clear that through CHIP you represented a large number of residents opposing the siting of the plant.

**Mr. Stephen Thompson:** Yes.

**Mrs. Laura Albanese:** Could you put a number on the size of the opposition?

**Mr. Stephen Thompson:** How do you put a number on the size of an opposition?

**Mrs. Laura Albanese:** Was it the majority of residents, would you say?

**Mr. Stephen Thompson:** Okay, Laura; the problem is that there's no communication with anybody. I find that going through listening to people and talking to people, especially politicians, there's ministries in this government—no matter if it's the Conservatives, the NDP, the Liberals, the Green Party or whoever it is, nobody wants to communicate with each other. They sit in their little silos, and the Ministry of Energy doesn't talk to the Ministry of Health, and the Ministry of Health doesn't talk to the Ministry of the Environment, and everybody goes around and does their own little thing.

There's no communication also when you go out and you start talking to the public. We knew nothing about this. The only way that we found out about it was that EPCOR actually reached out to the community and said, "We're planning on doing this." We had no communication with Eastern Power. There was no documentation with regard to Eastern Power. It was a struggle trying to get information from Eastern Power.

Laura, I can sit here for hours and discuss what was right and what was wrong. The community outreach after we started getting involved—we had no help from the media whatsoever. You had one of our committee members here, Greg Rohn, and it seems like we were being portrayed as NIMBYists. It was all about NIMBY. I met a lot of people through what was going on. I actually met Mr. Tabuns down on Queen Street at a community centre when the government was planning on putting a

gas-fired generating station down in the port lands down in Toronto.

We reached out to a lot of communities and I spent a lot of time going and talking to a lot of people. Over time I think it was—Laura, I would say in the thousands.

**Mrs. Laura Albanese:** Now, you may know that part of this committee's mandate is to review all factors that led to the cancellation. Those factors include promises by all three political parties during the 2011 election. I'm not sure, but I would believe that you've been watching this issue closely over the past year.

The opposition, you may know, has consistently blamed the government for the costs associated with the relocation of the plant and at the same time not taking, let's say, any responsibility for the fact that they also committed to the people of Mississauga to cancel the plant during the election. Regardless of who won the election, the people of your community were assured by all three parties that if they were elected they would stop or move the plant. Do you believe that the other parties should also have some responsibility to their campaign commitments?

**Mr. Stephen Thompson:** You know, sitting here, Laura, it's a little disappointing, because I have an energy critic who is not here who is a member of Parliament for the Conservatives. It's unfortunate that Mr. Yakubuski isn't here to defend himself because we had a meeting with Mr. Yakubuski out in Mississauga, who didn't have a problem with the power plant.

We had a rally where more than 1,400 people showed up. That was the first rally. The second rally that we held, at Le Treport in Mississauga, we invited all parties. It didn't matter if you were Green, NDP, Conservative. We got nothing—zero help from the opposition. The NDP: They reached out a little bit. But at the end of the day, the only politician that really stood in our minds as doing something was Charles Sousa.

0840

You know, we asked for Laurel Broten's help when she was the Minister of the Environment. We got enormous help from Donna. We asked for help from Mr. Smitherman. When he was Minister of Health we had a meeting with him. We had a meeting with Mr. Gerretsen. So, at the end of the day, Laura, I don't think that at any point in time the Conservatives came to the table and said, "You know what? We're going to help you guys out. We think this is a wrong decision."

It's unfortunate it comes down to the fact that it's a cost factor instead of a health factor and a right-decision factor. People make mistakes in life, and it's unfortunate that we as citizens are not aware of what goes on behind closed doors down here in Queen's Park, but when it comes time for making the right decision, I think that the decision to close the plant and to move it to another location was right. But there are a lot of other factors that are part of that, Laura, in the sense that: Why was the proponent even picked?

You know, back in 2001 the deputy minister of the province had a meeting and a conference down at Toron-



to Convention Centre discussing how that this plan was going to be put into place and how it was going to be proposed, who the proponents were, their financial backing, if they've ever built a plant before. So there are other decisions that should have been associated with that decision.

We were in a situation where we had to go to a library and photocopy thousands and thousands of documents because the proponent only had to do a limited amount of things, and they did it to that standard. We were out with the understanding from the Ministry of the Environment and the Ministry of Energy and the OPA that they were supposed to have a monthly meeting with all the residents. It was only after we started pressuring them that they had that meeting. All of a sudden, they have one meeting; they invited maybe 30 people and hundreds of them showed up; couldn't fit in the room. It got all chaotic. The police were called. There was nothing going wrong with it; we weren't pounding on the desk, screaming and yelling; it was very civilized in the way that we approached everything.

**Mrs. Laura Albanese:** So finally, in the middle of the 2011 election, Tim Hudak sent your organization a letter, which you quoted in a press release on September 27 of that same year. Mr. Hudak told CHIP, "We will not build this power plant if we are asked to form government." Would you agree that, while it took them, I guess, a very long time to get to that point, the PC finally committed to CHIP and that a Tim Hudak government would have cancelled the plant?

**Mr. Stephen Thompson:** Let's be clear on this, Laura: In 1999 the Conservatives were in power. In 1999, if they had come back to power we were getting a power plant in Mississauga. Boyd Upper and Rob Burton fought against that plant. I was not aware of it. I wasn't told by city council. I wasn't told by our councillor. Our mayor had an idea that this was going on. Obviously, the Conservatives didn't have a problem, through the meetings that we had with Mr. Yakabuski—he didn't see a problem with the plant. He didn't see a problem with the location of the plant.

So there's sort of a contradiction going on here. We asked for help from the Conservatives. We wanted their opinion and their views, but all of a sudden, because, uh-oh, you know, they may be losing some seats—to us it didn't matter who was in Parliament. It didn't matter who the MPP was. It didn't matter who was sitting at that table. The fact of the matter is that we asked for help from everybody; it didn't matter who. You know, we didn't have a specific party; we just wanted help, and we got that help. We really did, and thank God that we did get the plant finally closed. But as far as I'm concerned, I don't think Mr. Hudak helped at all. We had one of our members, Greg Rohn, who was here, who actually approached him at a meeting and said to him, "Can you help us out?" and he ignored him. How do you ignore somebody when you're trying to get your candidate elected and he sits at an all-candidates meeting?

Mario Pascucci, the chair of the Catholic school board, stood up at that meeting and said to Geoff Janoscik, who

was the candidate running for the Conservatives, "Why did you not show up at the rally?" His answer was, "Well, my boss told me to go out and door-knock." And with that, Mario said, "You mean, Mr. Hudak told you to stay home and not go?" "No, my wife told me not to go." That was the kind of candour, sort of flippant attitude, that we were getting from the Conservatives.

So you know what? At the end of the day, Laura, I'm not saying that I'm happy with the decision of the power plant going to Mississauga. I'm not happy with the fact that there's a cost involved in it. I'm looking at all factors involved in this: right location, right proponent, right conditions. That's what I'm looking for, and that's what we were fighting for.

**Mrs. Laura Albanese:** One of the things that we are supposed to do in the committee is really to change—and Premier Wynne has specifically committed that there be more local decision-making in the siting of energy infrastructure. What role would you see your organizations, the ones like CHIP, play in a process like this, moving forward? What would be your recommendation?

**Mr. Stephen Thompson:** What's the recommendation of a committee like CHIP or an organization like CHIP?

**Mrs. Laura Albanese:** No. In the future—

**Mr. Stephen Thompson:** I don't think the organization—

**Mrs. Laura Albanese:** What I'm saying is, in siting of plants in the future, what role do you think that local organizations like CHIP should play?

**Mr. Stephen Thompson:** I don't think any role. I think the politicians who get elected should make the right decision. We elect people to do and make decisions based on the intelligent facts that are put in front of them. Okay?

Was it the right decision to put a power plant on Loreland Avenue? I don't remember having a blackout ever since they closed coal-fired generating stations. Lights are still on. The electricity's still running. Was it a right decision to pick that location? No. But for having a role in terms of—yes, you should have some sort of communication with the community. There has to be some outreach to them.

**Mrs. Laura Albanese:** Okay.

**Mr. Stephen Thompson:** We got a power plant in Mississauga because of two stupid words in a zoning bylaw: "power generation." Those words were changed only after the fact that the city of Mississauga realized, "Oh, you know what? They can build a power plant." The Vogts and Eastern Power, they did what they needed to do, but the city of Mississauga knew in 1999 when they had Sithe Corp. come to the city of Mississauga to build a power plant on Winston Churchill south of Royal Windsor. The zoning in that land was exactly the zoning on Loreland Avenue. So why did it take the city of Mississauga until 2006 to start looking at their overall plan of where power plants could actually go?

Our illustrious mayor came down here and sort of went on and on—I don't know if she confused you



people, but you know what? We had four proponents come to Mississauga to build power plants—sorry; three in Mississauga and one in Oakville. The one in Oakville won. Was it the right decision? No. Eastern Power had three locations in Mississauga. Unfortunately, Eastern Power didn't have the finances or the wherewithal to go ahead and proceed with that. We fought for years to make sure that your government understood, Laura, that they didn't have the financing.

So there's underlying issues that I'd like answers for. I'm a voter. I'm a taxpayer in the province of Ontario. At the end of the day, there's decisions that have been made that we never will—I don't know if the answers will ever come out. I'd like to know why Eastern Power was ever chosen and why we have JoAnne Butler and Amir Shalaby coming out to Mississauga and explaining to us that, "There's community outreach and we're trying to help out." Well, you know what? If the OPA decided and JoAnne went forward with some of the recommendations that we made—the main one is limiting distance to residential neighbourhoods. Laura, to be honest, I think this could have been nipped in the bud a long, long time ago. I don't know why it got to the point where it is now. It is. We have to live with it. Move forward.

You know, Hazel came down here and said, "Let's get on with business." We have a mayor in the city of Mississauga who came down to Queen's Park behind everybody's back, never communicated with the community, trying to cut a deal with Enersource/OPG to put a power plant back down at Lakeview. Why? This is our city, Hazel. It doesn't belong to you; it belongs to us. So when you go and start making decisions without community involvement—you asked me that question earlier, Laura.

0850

**Mrs. Laura Albanese:** Yes.

**Mr. Stephen Thompson:** What community involvement was there? None; zero. It was only us communicating with Hazel and telling her what was going on in city council and giving her the facts that we actually came to a decision. Thank God we didn't get a plant back down at Lakeview. Yes, okay, the infrastructure is there, but you know what? Was it the right location? No. We have a beautiful waterfront in Mississauga and we want to return it back to the way it should be—power plants gone. We don't need them anymore.

I think there's also the issue, Laura, of the fact that transmission lines need to be reviewed and where they could be going and how that power can be—

**The Chair (Mr. Shafiq Qaadri):** One minute. Go ahead.

**Mrs. Laura Albanese:** Yes, one minute left.

**Mr. Stephen Thompson:** I can't keep going?

**Mrs. Laura Albanese:** For one minute.

**Mr. Stephen Thompson:** I'm good.

**Mrs. Laura Albanese:** You're good. Okay. Chair, we'll save the time for the next round if it's only a minute.

**The Chair (Mr. Shafiq Qaadri):** You forfeit the time. Thank you.

To the PC side, Mr. Fedeli.

**Mr. Victor Fedeli:** Thank you very much, Mr. Thompson, for being here today.

**Mr. Stephen Thompson:** You're welcome.

**Mr. Victor Fedeli:** A couple of other issues that this committee is looking at in addition to what our colleagues across the way were speaking about are the cost of the way the Liberal government went about doing the cancellation and moving it, and then about the—we don't have all the documents. It's very clear. So there's a cover-up of the documents.

Let me ask you two questions: Do you know anything about the total cost of either the Oakville or the Mississauga move, the total cost to move either the Oakville or Mississauga plant to the spots they ended up in? Do you know anything about the cost of this scandal?

**Mr. Stephen Thompson:** No.

**Mr. Victor Fedeli:** Do you know anything about who ordered the cover-up of documents?

**Mr. Stephen Thompson:** No.

**Mr. Victor Fedeli:** Thank you, Chair.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli.

To the NDP: Mr. Tabuns.

**Mr. Peter Tabuns:** Mr. Natyshak.

**The Chair (Mr. Shafiq Qaadri):** Mr. Natyshak.

**Mr. Taras Natyshak:** Thank you, Mr. Thompson, for being here. Thanks for your impassioned—

**Mr. Stephen Thompson:** I'm a passionate guy.

**Mr. Taras Natyshak:** That's good. You have to be, in a scenario like this.

You said in questions from Ms. Albanese that politicians should make the right decisions from the outset.

**Mr. Stephen Thompson:** Yes.

**Mr. Taras Natyshak:** I simply want to ask you: Who's responsible for siting these plants initially? From a political standpoint.

**Mr. Stephen Thompson:** I believe that the Loreland plant was the Minister of Energy at the time, so—

**Mr. Taras Natyshak:** But on the political end of it.

**Mr. Stephen Thompson:** Sorry?

**Mr. Taras Natyshak:** On a strictly partisan—which political party was involved in it?

**Mr. Stephen Thompson:** The Liberal Party.

**Mr. Taras Natyshak:** And who ultimately is responsible for signing off on the construction of those plants?

**Mr. Stephen Thompson:** The Liberal Party.

**Mr. Taras Natyshak:** Thank you, Chair. I have no further questions. Thank you, Mr. Thompson.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Natyshak. To the government side, 10 minutes. Ms. Albanese and/or Delaney and/or Cansfield. Ms. Albanese, 10 minutes.

**Mrs. Laura Albanese:** I just want to go back for a second to Mr. Rohn. He told the committee, "I went up to Tim Hudak at a campaign stop. I introduced myself and I explained that this was major in Etobicoke and Mississauga, in the riding that you're in right now. He brushed me aside.... Then they tried to rewrite history with



brochures saying they'd been campaigning against it for years...." Do you know what those brochures said?

**Mr. Stephen Thompson:** No, and I don't remember ever seeing them, receiving one. Being in the role that I took on, Laura, I had an actual meeting with Mr. Yakabuski in his office, with our chair, Tony Jones, explaining to him the concerns that we had in the community. I don't remember having Mr. Yakabuski follow through on finding out how things were going, if there was any help that we needed. Then, all of a sudden, because there's an election, we get Mr. Hudak actually coming to the table and saying, "Oh, we're going to help you." We had asked for help since 2004, so sending out brochures and flyers because maybe somebody might not win a seat or might not have their candidate elected—we didn't care about that. We cared about the fact that we had concerns related to the power plant and the location of the power plant.

It wasn't about who the candidate was or who the candidate wasn't. It didn't matter what party. We were bipartisan in every way, shape or form when we came into this. We even reached out to other people. We had lots of Liberals. We had lots of NDP. We had Green. We had Conservatives. It was disappointing. You people, you politicians—it doesn't matter who you are—should listen to the community and have some understanding that we have some knowledge about what goes on.

Laura, I've been researching this and doing this for quite a while now, I've learned a lot about the power industry and the energy industry and how it works. I've sat with most of the proponents that proposed to build some of these power plants. You know what? It was an education for me. Now it's a situation whereby—did we get help? No, and I think Mr. Hudak is trying to sway the matter.

**Mrs. Laura Albanese:** I just want to ask a couple of questions more about your meeting with Mr. Yakabuski. When did that meeting happen?

**Mr. Stephen Thompson:** I believe it happened in 2006. Laura, for me—

**Mrs. Laura Albanese:** So it was a long time before 2011.

**Mr. Stephen Thompson:** Well before 2011.

**Mrs. Laura Albanese:** Was it only one meeting?

**Mr. Stephen Thompson:** No, we had two meetings with Mr. Yakabuski. We had one down here at Queen's Park with Tony Jones and Rob Burton. Rob wasn't the mayor of the town of Oakville at the time. Then, through Phil Green, we also had Mr. Yakabuski out to Mississauga and we had a meeting at an old Boy Scout house that's on Lorne Park Road in Mississauga and had that discussion with regard to whether they could help us out.

**Mrs. Laura Albanese:** Were any commitments made?

**Mr. Stephen Thompson:** At the time of the meeting we had with Mr. Yakabuski, he said he'd look into it and that he'd try to find out some more information. I don't remember ever receiving anything in terms of writing from the Conservatives saying, "This is what we're going to do. This is how we're going to help you. We're going

to reach out and do whatever we can to help you get this plant relocated or stopped."

**Mrs. Laura Albanese:** Was there any email correspondence between yourself and Mr. Yakabuski?

**Mr. Stephen Thompson:** There were a couple of emails from me.

**Mrs. Laura Albanese:** Would you be able to table those with the committee?

**Mr. Stephen Thompson:** You know what, Laura? We have almost nine file boxes full of information. For me to go through every single, solitary one of those documents and retrieve emails or pull them all up—it may take me a while, but as far as I'm concerned, that's between Mr. Yakabuski's conscience and trying to help us out, and then what we believe is the right thing and what was the wrong thing.

**Mrs. Laura Albanese:** Well, even if it will take a little bit of time, can we ask for those documents to be tabled, the correspondence, please?

**The Chair (Mr. Shafiq Qadri):** Noted. Thank you.

**Mrs. Laura Albanese:** Thank you. I guess another question that I would ask is about another quote. I want to ask you about the quote from the same CHIP press release on expressing disappointment at the political games that were being played with the power plant issue, noting that the PCs had inflated a big red elephant beside the site. Why did that incident upset you so much?

**Mr. Stephen Thompson:** For the first time in my life, Laura, I decided that I was going to get involved in something that I believed in. To us, it was something that was not a game; maybe it was to the Conservatives. Spending the amount of time and the amount of energy going to meetings, meeting with people, talking to people—you know what? I have a family.

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Doing those things took away from my family time, but my family understood, and so did the residents and the people of Mississauga. You know, playing games and putting elephants up or whatever they wanted to do—all they had to do was reach out and talk to us and allow us to communicate with them and understand what we were looking at. You know, balloons and all the other stuff, to me, that's frivolous. It becomes now: Is this a joke? Is this a game? This is not a game to us; it was never a game to us. This is about making the right decisions to put power plants in communities that either didn't want them or making sure that that decision to put them in communities was the right location under the right conditions. You know, our mayor keeps saying it over and over again, and she's right: right conditions, right circumstances, right location. Those are the things that should be concentrated on, not blowing up balloons and sticking them in front of locations.

You know, I reached out to every one of the candidates in all ridings that were affected—could have been affected—by this power plant. I reached out to the Conservative member running against Laurel Broten; I reached out to the candidate that was running against Donna Cansfield. I specifically asked Zoran Churchin to



make a statement, to come and stand in front of the property, and what we got, Laura, was nothing, zero. We got no help.

**Mrs. Laura Albanese:** I want to ask you another question. During his testimony, Mr. Rohn mentioned a few times that the NDP had attended a CHIP rally.

**Mr. Stephen Thompson:** Yes.

**Mrs. Laura Albanese:** Can you tell the committee a little more about the rally and what it meant to have the NDP in attendance there?

**Mr. Stephen Thompson:** Okay. So you're holding a provincial election, and you want to get an understanding from all parties of their position. At the first rally we had well over 1,500 people and the second rally we had over 1,200 people sitting in a room, with anybody and all parties invited. The Conservatives decided they didn't want to show up. What does that tell the community? That they didn't care. That was well before—well before—Mr. Hudak all of a sudden gets off the bus, stands in front of the property and says, "You elect us, we're going to close this plant." Then why didn't any of those Conservative members or those Conservative candidates show up at that rally?

You know, I'm looking at it from the standpoint that it's common sense. The common-sense thing is—you know what?—make the right decision. Show up at a rally, say what you have to say, and let the voters decide on how they want to go. But not showing up at a rally and not making a statement until after the fact kind of puts a bad taste in my mouth.

**Mrs. Laura Albanese:** And on September 26, 2011, Mr. Tabuns told Inside Toronto, "We wouldn't build it."

**Mr. Stephen Thompson:** Yes.

**Mrs. Laura Albanese:** So did you receive a similar commitment from the NDP?

**Mr. Stephen Thompson:** We had more help from the NDP than we did the Conservatives. You know, I remember meeting Mr. Tabuns a long time ago with regard to the Portlands plant and having them in their community down in—

**The Chair (Mr. Shafiq Qaadri):** The floor goes to the PC side: Mr. Fedeli? Mr. Leone.

**Mr. Rob Leone:** Sir, just a few questions. When did you first learn about the plant, that the plant was going to be sited where it was going to be?

**Mr. Stephen Thompson:** When did I first learn about—

**Mr. Rob Leone:** When the plant was going to go forward.

**Mr. Stephen Thompson:** In 2004.

**Mr. Rob Leone:** In 2004, so that's pretty early.

**Mr. Stephen Thompson:** Yeah.

**Mr. Rob Leone:** And you had conversations with members of the Liberals and all parties at that time as well?

**Mr. Stephen Thompson:** Yes.

**Mr. Rob Leone:** Okay. Who made the decision to put the plant there, in your estimation?

**Mr. Stephen Thompson:** The Minister of Energy.

**Mr. Rob Leone:** The Minister of Energy. And in your estimation, would you say that that decision to put the plant there is the source of your consternation? You've had a lot of testimony today, but really, it was the decision to put the plant there in the first place that led to all your time lost with your family, as you've explained—

**Mr. Stephen Thompson:** No. I think I got involved in this because of the power plants themselves, not the location of the power plant on Loreland Avenue. You know, it seems like we keep getting painted with the same brush over and over again, Mr. Leone: that it's about NIMBY, NIMBY, NIMBY. It's nothing to do with NIMBY.

Why did I go and spend time down with the people fighting against the Portlands plant? Why did I go to York region and talk to the people about a power plant going up there? Why did I spend time with the people in Oakville regarding a power plant going in Oakville? It was understanding my education on what I learned and passing it on to other people who had just gotten involved in it, and making sure that they understood what our position was in our community based on some of those 46 points that we put forward.

*Interjection.*

**Mr. Stephen Thompson:** Okay.

Getting involved in this, Mr. Leone, was a decision based on just the plants themselves—the conditions and under what conditions, and the locations that the plants really were being placed in.

**Mr. Rob Leone:** All right. Your major interest, too, is to have local input into the decisions on where those plants are.

**Mr. Stephen Thompson:** Well, I'm more concerned about some of the ministries starting to talk to each other. I said it earlier: They live in these little silos and they don't talk to each other. We had the Minister of Health, Mr. Smitherman, out there. It's a health issue with regard to the particulate matter that comes out of these plants. It's also an energy component whereby: Do you really need those power plants—those peaker plants—to go along the transmission lines and put them into communities? Is there more research that should be done into the antiquated and out-of-date transmission lines that are part of this province and start researching and start investing some money into those types of situations? Then there's the Ministry of the Environment that should play a role into the Ministry of Health.

You've got all these different ministries making all these different decisions but no one wants to talk to each other, and we tried to get them involved. We begged them to get involved with each other and talk to each other. The unfortunate part about it is, you get a minister come in, a minister go out; a minister come in, a minister go out. Then they're got to learn all over again. It's just the same process.

Having the OPA around—it didn't help at all. We would have assumed that the OPA would have been able to help us out. We got very, very little out of them.



**Mr. Rob Leone:** They're just following the direction from the government.

**Mr. Stephen Thompson:** I know, but their directive, in my opinion, should be an outreach to the community. There's got to be more communication with what goes on with these things. I'm not blaming the provincial party. I'm not saying that they're fully to blame for this. We have our own municipal problems. We could have had this nipped in the bud—just because of two words—and we never would have been sitting here talking about Loreland Avenue, because two stupid words like “power generation” are in a zoning bylaw. The assumption from the city was, “Oh, you know, if you want to build a manufacturing facility and you want to put a 20-megawatt power generator in there,” then you know what? That's going to be what we're looking at.

We have mistakes all the way around. It really doesn't matter who you're pointing the finger at.

**Mr. Rob Leone:** Has anything changed, in your view?

**Mr. Stephen Thompson:** I don't know. I don't think it's changed at all until we get a new mayor. It's unfortunate. I'm not really happy reading the statements that our mayor came down here inciting that we, the community, made a deal to allow a power plant to go in Mississauga on Winston Churchill. We never made a deal. There was no deal cut. The community wasn't involved until after the fact, but now—oh, now, all these other things—Lorne Park and Clarkson were involved in it, and Rob Burton and Boyd Upper did a hell of a job trying to get it stopped. Yes, they asked Sithe to make some concessions—stack height, quality control—and Sithe went out of their way to mandate to try to help with that, okay? They implemented that into their proposal. Now you come back and you have people like our mayor coming down to Queen's Park, knocking on any door that she can possibly find, pleading with somebody to put a power plant back down in Lakeview without any communication, any involvement in the community, because she's looking at one thing and one thing only: We're running out of land in Mississauga. So what is she looking for? She's looking for the revenue out of that power plant to go back to a city-owned power company, Enersource, to

start putting that money back into the coffers of the city of Mississauga. Is that right? No, it's not.

**Mr. Rob Leone:** All right. Well, I think that's great. Thanks, sir.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Leone. To Mr. Tabuns.

**Mr. Peter Tabuns:** Mr. Thompson—

**Mr. Stephen Thompson:** Mr. Tabuns.

**Mr. Peter Tabuns:** Chair, when testimony is complete, you're aware I have a motion that I would like to move?

**The Chair (Mr. Shafiq Qaadri):** I am fully aware.

**Mr. Peter Tabuns:** I'm very pleased.

Mr. Thompson, you've been very clear. I have no further questions. Thank you.

**Mr. Stephen Thompson:** Thank you.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns, and thank you, Mr. Thompson, for your advocacy and your presence before the committee. You're officially dismissed.

**Mr. Stephen Thompson:** Thank you.

**The Chair (Mr. Shafiq Qaadri):** Mr. Tabuns, I would now invite you to present said motion.

**Mr. Peter Tabuns:** Thank you, Chair.

I move that the justice committee request the production of the documents from the Ontario Power Authority and the Ministry of Energy referred to by Craig MacLennan in his testimony before this committee earlier this week, including the slide deck he referred to as setting out the draft long-term energy plan and the slide decks prepared on gas plant and transmission matters that led to the long-term energy plan.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns. Your motion is in order and, therefore, before the committee. Are there any comments before we vote on this motion?

Seeing none, all in favour? All opposed? Motion carried.

If there's no further business before the committee, we're adjourned till next week.

*The committee adjourned at 0911.*







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Second Session, 40<sup>th</sup> Parliament

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Deuxième session, 40<sup>e</sup> législature

**Official Report  
of Debates  
(Hansard)**

Thursday 28 March 2013

**Journal  
des débats  
(Hansard)**

Jeudi 28 mars 2013

**Standing Committee on  
Justice Policy**

Members' privileges

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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE POLICYCOMITÉ PERMANENT  
DE LA JUSTICE

Thursday 28 March 2013

Jeudi 28 mars 2013

*The committee met at 0830 in room 151.*

## MEMBERS' PRIVILEGES

**The Chair (Mr. Shafiq Qaadri):** Colleagues, I call to order the meeting of the Standing Committee on Justice Policy. As you know, we're here to continue our hearings.

Before I invite our first witness to come forward, I would just like to announce and share with the committee that because the individuals who are invited to present before the committee are under oath, if they are asked questions of a deep, complex nature, we might want to extend to them the courtesy, without interruption, that they finish their answers because, again, they're under oath, so they should be afforded the opportunity to give fulsome answers.

That's obviously a judgment call. It's a protocol of the committee. If I see you interrupting a particular witness here and there, we let it go, but if it becomes overly burdensome, then we will—

*Interruption.*

**The Chair (Mr. Shafiq Qaadri):** And please turn off all cellphones, too.

## MR. DAVID LIVINGSTON

**The Chair (Mr. Shafiq Qaadri):** With that, I would now invite Mr. Livingston to please be affirmed.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Do you solemnly affirm that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth?

**Mr. David Livingston:** I so affirm.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Livingston. As you know the protocol very, very well, you have five minutes to make an introductory address, followed by rotating questions, beginning with the PC Party. I'd invite you to please begin now.

**Mr. David Livingston:** I won't take the full five minutes. I mostly just wanted to clarify that I had two involvements or two roles with respect to the gas plants. In about June 2011, as the CEO of Infrastructure Ontario, I was brought into the negotiations with TransCanada with respect to the Oakville plant by the then secretary of cabinet, Shelly Jamieson, the then Deputy Attorney General,

Murray Segal, and the then Deputy Minister of Energy, David Lindsay, and was quite active in trying to work out a negotiated solution with TransCanada in that role.

When I became the chief of staff to the Premier in May 2012, then I no longer had a direct role in any of the negotiations or any of the involvements with any of the parties—more just an oversight role on what was going on overall. So when I answer questions, I'll try and clarify—it should be clear from the time frame, but I'll try and clarify which hat I was wearing when I was doing what I was doing. With that, I'm at your pleasure, and I'm happy to answer any questions.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Livingston. Beginning with the PC side: Mr. Fedeli. Twenty minutes.

**Mr. Victor Fedeli:** Thank you very much. I was trying to write some notes down when you were speaking. What date were you brought in to lead the negotiations with TransCanada?

**Mr. David Livingston:** I don't remember exactly. I think it was June 2011.

**Mr. Victor Fedeli:** And who specifically asked you to lead that file?

**Mr. David Livingston:** There were three people, if you like: Shelly Jamieson, who was the then secretary of cabinet; Murray Segal, who was the then Deputy Attorney General; and David Lindsay, who was the then Deputy Minister of Energy.

**Mr. Victor Fedeli:** When you were brought in to lead that file, how much money were you authorized to offer and what were the parameters set around that amount?

**Mr. David Livingston:** At that time, I have no recollection that there was any amount of money—and in a sense, I didn't really have any authority to do any kind of deal. It was more, "Go and talk to TransCanada and find out what deal it is possible to do, and come back to us with what is possible." I wouldn't have framed it that I had a mandate or that I had the power to close anything or do anything; I had a mandate to go and find out what was possible and bring that back to the three.

**Mr. Victor Fedeli:** Eventually, offers were made back and forth. So when were you given an amount of money to begin those more serious offers as time went on?

**Mr. David Livingston:** I wouldn't say that there were offers back and forth. The first approach or the first step I took was to go and talk to TransCanada and figure out where they were, what was their interest, what were they

looking for. I had a sense of what they wanted. At that point, we started into discussions. I think it's fair to say that what TransCanada really wanted was—they had a contract to provide power to the province in Oakville. They wanted another contract to provide power to the province—obviously not in Oakville. So the question was, where was it going to be possible to do that?

While I was having a conversation with them, TransCanada also started having conversations with OPG about, was there another site where it would be possible to do that?

**Mr. Victor Fedeli:** Did you lead the negotiations with TransCanada?

**Mr. David Livingston:** I would say yes.

**Mr. Victor Fedeli:** If you look at our slide number 1 or document 1 where it talks about “Government participation,” this is a slide that says, “Province would be pleased if the following or a combination of the following criteria were achieved:

“—Negotiated solution does not exceed” \$1.2 billion, and that

“—No cheque issued to” TransCanada.

Is that the number that you were given as well, the number that is printed in this slide?

**Mr. David Livingston:** I don't recognize this slide. I'm not sure that I've ever seen it. I don't really recall ever being given a number. I would say more that once it became clear what was going to be possible to do, I was coming to the government—the parties to the agreement, if there was going to be one reached, were going to have to be TransCanada, OPA and the province. So it was more me explaining what was possible and them deciding were they prepared to live with it, as opposed to them saying to me, “Here's what we'll do. You go out and sign a deal.” I had no signing authority, no signing power. I was trying to facilitate an agreement between the parties.

**Mr. Victor Fedeli:** I'm sorry, but by the time you took the file over, there had already been two offers to TransCanada.

**Mr. David Livingston:** Yes. I've seen that, and I've heard that. It's not obvious to me that that's what happened. So—

**Mr. Victor Fedeli:** Well, it's obvious to us. We have the documents that—in fact, if you'd like to jump to document number 3, “This government-instructed counter-proposal to settle was submitted on 21 April 2011. It had an effective financial value of \$712 million.” Were you aware when you took this over, when you briefed yourself on the file—I presume you would have been briefed or had briefed yourself on the file—that you were taking over this billion-dollar file?

**Mr. David Livingston:** Been briefed by the people.

**Mr. Victor Fedeli:** So would you have been aware at that time, when you were briefed by the people, that there was indeed a \$712-million offer to settle?

**Mr. David Livingston:** No.

**Mr. Victor Fedeli:** You did not know of that offer?

**Mr. David Livingston:** No.

**Mr. Victor Fedeli:** You did not know, then, that TransCanada rejected the offer?

**Mr. David Livingston:** No, and I would go further and say—

**Mr. Victor Fedeli:** How did you brief yourself on the file then?

**Mr. David Livingston:** —this is surprising to me.

I was briefed on the file by the three people I mentioned—

**Mr. Victor Fedeli:** And they didn't tell you there was a \$1.2-billion limit or that there was a \$712-million offer that was rejected?

**Mr. David Livingston:** No.

**Mr. Victor Fedeli:** You came in cold and started negotiations, not learning what the other side has already turned down?

**Mr. David Livingston:** I went and talked to the other side and heard from them first-hand what they were interested in doing.

**Mr. Victor Fedeli:** Let me just go back here, then. If you look at document number 2, on August 19, you sent confidential advice to cabinet. In that confidential advice to cabinet, you would see that there are several offers that you were making to TransCanada: A, B, C, D and E. There's five different offers there. Who would have authorized you to make those offers to TransCanada?

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**Mr. David Livingston:** I would not say they were offers. I had no authority to make an offer of any kind to TransCanada. These would have been my view on what the possibilities were as between TransCanada and the province to settle the dispute. These would have been my opinion of what was possible, and it would have been to others to decide whether they were prepared to do them or not.

**Mr. Victor Fedeli:** So who would have authorized you to create these five proposals?

**Mr. David Livingston:** Again, they're not proposals. They were my view, as the person brought in to talk to TransCanada about what was possible to do to be able to settle the dispute.

**Mr. Victor Fedeli:** Okay. So who would have authorized you to go ahead and prepare this private and confidential draft of a development agreement between OPG and TransCanada Energy?

**Mr. David Livingston:** I would have assumed that responsibility, or assumed that authority, by the brief that was given to me by the three people I mentioned.

**Mr. Victor Fedeli:** So we're back to Shelly Jamieson, Murray Segal and David Lindsay?

**Mr. David Livingston:** Yes.

**Mr. Victor Fedeli:** So this document called “Confidential Advice to Cabinet”—you authored this?

**Mr. David Livingston:** I did.

**Mr. Victor Fedeli:** Without knowing that TransCanada already turned down other offers?

**Mr. David Livingston:** Again, I was talking to TransCanada at the time, and I certainly wasn't getting the sense from them that they felt there was an offer on the



table, that there was something that they were—it just didn't seem to me that was the case.

**Mr. Victor Fedeli:** Well, I mean, it was the case. We have the actual offer. We have their declining of the offer of \$712 million. They wanted to hold out for more. We also, as I pointed out, have the document that said the government would be pleased if it didn't exceed \$1.2 billion.

**Mr. David Livingston:** My sense of the discussions with them is that what they wanted was essentially to have the same contract and do the same thing: produce power for a price somewhere else.

**Mr. Victor Fedeli:** In these five drafts, these five ideas, did you have any idea whatsoever what either of these five would have cost?

**Mr. David Livingston:** No, I wouldn't say that I had a detailed idea of what each of them would cost. It was more of a higher-level view, I think is right.

**Mr. Victor Fedeli:** Would you have had input from the Ministry of Energy, the Ministry of Finance—anybody sort of helping you along on crafting these major energy proposals?

**Mr. David Livingston:** No, because I was quite specifically directed or instructed to not involve a lot of other people, to keep it to the three, with the intention, as I said, that these were proposals. I guess my presumption would have been that they would go back in to the government, and they would be doing the analysis before they decided if they were prepared to live with any of these.

**Mr. Victor Fedeli:** When you provided this confidential package—an energy proposal submitted with no energy expertise—to cabinet, would they have approved this to be presented, any of these options to be presented, to TransCanada then?

**Mr. David Livingston:** I don't know that any of these went to cabinet, and so I don't—

**Mr. Victor Fedeli:** This is the “Confidential Advice to Cabinet.”

**Mr. David Livingston:** Right.

**Mr. Victor Fedeli:** You don't know if it went to cabinet?

**Mr. David Livingston:** I had no ability, no authority, to take anything to cabinet. If it happened, it would have been done through the ministry.

**Mr. Victor Fedeli:** So who would you have handed this file to, this “Confidential Advice to Cabinet” that you wrote? Who did it go to, then?

**Mr. David Livingston:** It would have been to the three.

**Mr. Victor Fedeli:** So you would have sent that, again, to Jamieson, Segal and Lindsay?

**Mr. David Livingston:** Yes.

**Mr. Victor Fedeli:** Nobody else?

**Mr. David Livingston:** No.

**Mr. Victor Fedeli:** Okay. Eventually, one of these proposals was accepted, basically. I can't remember which one it was. It might have been A, actually. So one of these proposals not created by anybody with energy

expertise is now made a government-designed proposal to TransCanada. Do you have any idea, then, what the actual costs were for this proposal?

**Mr. David Livingston:** I wouldn't have had a detailed idea, no.

**Mr. Victor Fedeli:** You had no idea what this cost the taxpayer when you made this proposal? It was just a proposal that sounded good, or—what would it have been? If the price wasn't a concern, if money was no object, and energy concerns were no object either, as you've stated, what would have driven this, then?

**Mr. David Livingston:** The motivation would have been—in trying to settle this, the paramount objective was to do something that was good for the taxpayer—

**Mr. Victor Fedeli:** But we didn't know the cost.

**Mr. David Livingston:** —would have had some idea of what the value of the contract to TransCanada would have been. It would have been informed by what TransCanada's thinking was, and then trying to find something that we're prepared to do with the assumption that the government would be looking at that and saying, “Are we prepared to live with this trade-off?” So my job was to find out what was possible. I would say it was the government's job to find out if the “what was possible” was acceptable.

**Mr. Victor Fedeli:** So again: With no energy expertise and no holds barred on the amount of money it cost, you created five options, of which TransCanada obviously took one.

I'll draw your attention to document number 4 from the Ontario Power Authority; it's page 2 of JoAnne Butler's opening statement. She says: “A memorandum of understanding ... was made public on” September 4 that “stated that there would be other costs to the relocation in addition to the \$40 million in sunk costs. This included the extra costs to get gas to the plant in Lennox and for connecting the plant to the province-wide transmission system.” Were you a party to that MOU?

**Mr. David Livingston:** Sorry, was that September 4, 2012?

**Mr. Victor Fedeli:** That would have been September 24, 2012.

**Mr. David Livingston:** So no, I wouldn't have been a party to that.

**Mr. Victor Fedeli:** You weren't aware of it at all? What position were you in at that time?

**Mr. David Livingston:** I was the chief of staff to the Premier at that time.

**Mr. Victor Fedeli:** So the Premier never saw this memorandum of understanding?

**Mr. David Livingston:** Not to my knowledge.

**Mr. Victor Fedeli:** Not to your knowledge. Okay.

Do you have any idea of what she's referring to in the lead-up, considering that this notice from her is based on the proposal you wrote?

**Mr. David Livingston:** The proposal that I wrote was a year previously. Things had changed a lot over that year, and it's not even obvious to me that where it ended up was one of the original options.

**Mr. Victor Fedeli:** Well, it ended up at Lennox, and your option A was to do a facility at Lennox. I would suggest that they took your proposal and continued to work with you to craft it. You were somewhere during the time that this proposal went from, “Hey, I have an idea and I don’t know what it’s going to cost, and nobody in energy has ever seen it, but I’ve got a great idea. Let’s put this out there”—from that point on, you continued to work with TransCanada on this file. You were the lead negotiator.

**Mr. David Livingston:** If I could maybe elaborate on what happened over the course of the month of July: I was brought into it; I had discussions. There was really a parallel negotiation going on with TransCanada. On the one hand, they were talking with OPG directly about what was possible with respect to a replacement plan. It was OPG and TransCanada that were having discussions about Lennox.

At the same time as that was happening, we were drafting an arbitration agreement, a binding arbitration agreement, as a way of being able to have a means to settle this that wouldn’t have required litigation, wouldn’t require a lawsuit.

**Mr. Victor Fedeli:** Why was the arbitration agreement you spoke of halted and the settlement negotiated?

**Mr. David Livingston:** I don’t think it was halted. Within the arbitration agreement, there was a process laid out about how the parties would come to an agreement. It was always assumed that the discussions between TransCanada and the province would continue. The arbitration agreement, if you like, was a fallback if those didn’t get anywhere.

**Mr. Victor Fedeli:** So let’s look at these costs, then, that OPA is talking about, that were based on your original A.

**Mr. David Livingston:** I’m not sure they were based on my original A, so—

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**Mr. Victor Fedeli:** Well, your original plan A was to get to Lennox, and that’s where they ended up. You negotiated this all the way through. You were the negotiator of it right up to—when did you stop being the negotiator of this, just the date?

**Mr. David Livingston:** When the arbitration agreement was signed, that would have been the end of July 2011, then I would no longer have been actively working with TransCanada on trying to come to a solution.

**Mr. Victor Fedeli:** So the costs here that Ms. Butler was talking about—transmission costs, getting gas to another site—you made none of those determinations when you came up with the five plans, of what the additional costs could be? When you came up with plan A, plan B, C, D and E, there was no thought, no concern, no issue, no budget limit, of what this could cost the taxpayer? You came up with five ideas that sounded good?

**Mr. David Livingston:** Five ideas that then the government would properly do the work on what was the cost and which of these were possible. If I may—

**Mr. Victor Fedeli:** The cost, according to Ms. Butler here, is in the hundreds of millions. She has verified what the energy expert that was here—his number was \$828 million, but he had one number of that component that was \$313 million. She said, “No, that number is a little low. It could be \$319 million to \$476 million.” If you do her math on top of his math, we’re at \$991 million. Her opening statement was very clear that an MOU was signed and that the government was a signatory to the MOU. You’re saying that you had no involvement in that. You were the guy at the beginning and the chief of staff at the end, but you were out of that middle pocket. Is this what I’m hearing you say to us today?

**Mr. David Livingston:** Yes.

**Mr. Victor Fedeli:** Okay. So what was your role in the government on September 24, 2012?

**Mr. David Livingston:** Chief of staff to the Premier.

**Mr. Victor Fedeli:** The government was a signatory to this agreement, and you’re saying that, as the chief of staff, you had no involvement, no knowledge whatsoever of this \$991-million deal.

**Mr. David Livingston:** Yes.

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Victor Fedeli:** Quite frankly, I’m having a hard time with that. I’ve got to be honest. You were the creator of the problem with TransCanada, you were brought in to solve it, and you were there during the announcement of what the total was, yet you’re taking no credit for coming up with the deal that you proposed. Chair, I’m baffled at this. We’ve got the man sitting here in front of us who did the deal with—

*Interjection.*

**Mr. Victor Fedeli:** I’m getting there; I’m just not sure which way to go. I’ve just got to think. I’m so baffled that we’ve got somebody sitting here who is telling us there was no limit, that he could spend whatever he wanted on these proposals, and had no contribution from anybody in energy planning a billion-dollar gas plant. My question to you—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli.

To the NDP: Mr. Tabuns, you have 20 minutes.

**Mr. Peter Tabuns:** Thank you, Mr. Livingston, for being here. When the deal was finally reached with TransCanada Enterprises and the MOU was signed, the story that we’ve been told, the words that were used were that we were out of pocket \$40 million. Were you aware of that figure being used at the time?

**Mr. David Livingston:** Yes.

**Mr. Peter Tabuns:** As the chief of staff to the Premier, had you been briefed on the MOU that had been signed with TransCanada?

**Mr. David Livingston:** I don’t have a recollection of that.

**Mr. Peter Tabuns:** Okay. A problem in which the government was embroiled for well over a year, where you had done a fairly central paper recommending options for taking things on, it’s finally resolved, and as



the chief of staff, you weren't briefed as to how much it cost?

**Mr. David Livingston:** I can only repeat, I was well aware of the \$40 million, well aware of the discussions with TransCanada going back to my earlier days. The MOU is not something that I recall.

**Mr. Peter Tabuns:** So this was a minor item; you accepted the figure of \$40 million, and you moved on with life.

**Mr. David Livingston:** The advice that we had was that the \$40 million was the out-of-pocket cost in Oakville, and that's the figure that I accepted.

**Mr. Peter Tabuns:** No one ever said to you that there was a cost for gas distribution and management that was in the hundreds of millions that was part of this?

**Mr. David Livingston:** Not to my recollection.

**Mr. Peter Tabuns:** So the Minister of Energy and the deputy minister never told you or anyone else in the Premier's office that, in fact, we're talking about a lot more than \$40 million here?

**Mr. David Livingston:** No one told me, and I can't speak to what else people would have been told. But there was not a discussion that there was more money involved than the \$40 million.

**Mr. Peter Tabuns:** Like my colleague, I find that quite extraordinary.

You were given carriage of this file in roughly June 2011?

**Mr. David Livingston:** Correct.

**Mr. Peter Tabuns:** You were told at that time that an impasse had been reached?

**Mr. David Livingston:** Yes, that there had been discussions with TransCanada; they were not going well and could I do something.

**Mr. Peter Tabuns:** You were never briefed by the OPA?

**Mr. David Livingston:** No.

**Mr. Peter Tabuns:** Did you talk with their legal counsel about this?

**Mr. David Livingston:** Towards the end—as I said, once we got to the arbitration agreement—they would have had to have been signatories to it. So I would have been talking to OPA at that time about what were the terms of the arbitration agreement. It was more, in a way, me briefing them on what was happening as opposed to the other way around.

**Mr. Peter Tabuns:** At the end of July 2011, there's an email from Michael Lyle, who is counsel for the OPA, writing to Colin Andersen about the arbitration and saying he was going to talk to you that night because there was a board meeting coming up with the OPA. Do you have any recollection of that discussion?

**Mr. David Livingston:** I don't have a recollection of the discussion. I think I went to the board meeting, though. My recollection is that I was invited to that board meeting.

**Mr. Peter Tabuns:** At that board meeting, one of the documents that we believe was presented—because the staff emails were all about this briefing deck—was a

review of everything that had happened to that point. Do you remember that briefing?

**Mr. David Livingston:** That would have been, presumably, a briefing to the board, not a briefing to me, so no, I wouldn't have been party to that.

**Mr. Peter Tabuns:** So you were handed a major file with no historical background whatsoever?

**Mr. David Livingston:** I was handed a file where there was an impasse, and my job was to figure out, was it possible to break the impasse? My knowledge of it came from discussions with TransCanada.

**Mr. Peter Tabuns:** You never availed yourself of talking to the Ministry of Energy or the Ontario Power Authority?

**Mr. David Livingston:** Again, the brief that I was given was that the three people I mentioned wanted me to keep it to discussions with those three.

**Mr. Peter Tabuns:** One of the things that has been perplexing to us in the course of these hearings is that everyone seemed to have a small chunk of this, and no one seems to be aware of what anyone else was doing. Was there a guiding mind that was carrying this file? Was there anyone in charge?

**Mr. David Livingston:** I don't know how to answer that.

**Mr. Peter Tabuns:** Well, did you have a guess at the time as to whether or not there was someone in charge, or was this a free-floating crap game in the cabinet?

**Mr. David Livingston:** I think the Ministry of Energy would have owned the file, if you like, and it would have been them that would be providing advice to everybody about what's appropriate to do in the circumstances.

**Mr. Peter Tabuns:** In the Ministry of Energy, who was running the show? Who, from day to day, said, "Gee, we've got a problem here. We should be making sure that it gets addressed"?

**Mr. David Livingston:** As I said, one of the three people, when I was first given the brief, was David Lindsay, who was the Deputy Minister of Energy. He would have been my contact with the Ministry of Energy. Then when David left, I think Serge Imbrogno became the deputy after that.

**Mr. Peter Tabuns:** So they were the people who were running the government's effort. When we follow the strings back, should they all go back to the Deputy Minister of Energy throughout this project?

**Mr. David Livingston:** It's probably best to ask the Deputy Minister of Energy. I would have assumed that the Ministry of Energy would be the centre point for the discussions, negotiations and the outcome.

0900

**Mr. Peter Tabuns:** I'm sure we will get that opportunity. I have to just say, now having watched this, that everyone came in for a few months, did a little bit and then was moved on, and no one seems to have had any comprehensive picture. I find it hard to believe that you run a \$100-billion-plus government without someone having control of, carriage of, understanding of and direction on a file.

But as you've said, you were brought in, and you weren't given the history; you talked to the party that we were engaged in arbitration with—that we were in conflict with—for your background; and then you left and didn't pay attention when the settlement happened, so you don't know what the value of the settlement was. That just seems very strange to me.

**Mr. David Livingston:** I would have been briefed, as I said, by the three people who were involved, and undertook negotiations with TransCanada based on that.

**Mr. Peter Tabuns:** You had negotiations with TransCanada for about a year?

**Mr. David Livingston:** About a month.

**Mr. Peter Tabuns:** About a month.

**Mr. David Livingston:** Me, personally?

**Mr. Peter Tabuns:** Yes.

**Mr. David Livingston:** About a month.

**Mr. Peter Tabuns:** Did you take notes of those meetings?

**Mr. David Livingston:** If I did, I have no idea where they are. I guess it's possible.

**Mr. Peter Tabuns:** Could you do us a favour and check your files to see if you have notes of those meetings, or if you sent any emails to the three people you were working with to inform them of how things were going?

**Mr. David Livingston:** Certainly.

**Mr. Peter Tabuns:** And you, Mr. Chair, I'm sure, will send a reminder letter.

**The Chair (Mr. Shafiq Qaadri):** I shall do so, Mr. Tabuns.

**Mr. Peter Tabuns:** Okay. Did Chris Morley and the Premier's office have no leadership role in this matter?

**Mr. David Livingston:** When I was involved with it, going back to June and July, it was with the three people I mentioned.

**Mr. Peter Tabuns:** And that's June and July of 2011.

**Mr. David Livingston:** Correct.

**Mr. Peter Tabuns:** Did you not have any discussions with Chris Morley on this matter?

**Mr. David Livingston:** I don't recall. My discussions and the things that were substantive would all have been with the three.

**Mr. Peter Tabuns:** When JoAnne Butler was before us, she testified: "Mr. Livingston came in when the deals broke down between the OPA and TransCanada early in 2011. Again, we weren't comfortable that we were getting the right data."

As I have read it, she's referring to the data from TransCanada as to what their real costs were and what their real damages were. Were you getting the right data from them?

**Mr. David Livingston:** By the terms of the arbitration agreement, that data would have been provided as part of the arbitration, so it wouldn't have been necessary for me to get the data. It would have happened through the course of the process. That was the purpose of the exercise.

**Mr. Peter Tabuns:** Did you ever have the opportunity to analyze TransCanada's financial assessment of its situation?

**Mr. David Livingston:** No, and it wouldn't have been necessary, because it would have been done through the process of the arbitration, where lots of people would have been able to get the information and properly analyze it.

**Mr. Peter Tabuns:** In July 2011, Ontario Power Generation wrote to you about its deal with TransCanada Enterprises, saying that the turbines were only worth 60% of what TransCanada was claiming. Do you have a recollection of being informed about that?

**Mr. David Livingston:** I have a recollection. It seems to me that what they were saying is the market value of those would have been less than the purchase value. That's my recollection. So if we had taken those turbines and sold them on the market as, in effect, used turbines, they would have been less than the purchase price.

**Mr. Peter Tabuns:** And did you use that information in your dealings with TransCanada?

**Mr. David Livingston:** As I said, my discussions with TransCanada at the time were about trying to create the arbitration agreement, to create a process to get to a solution. The discussions about the specific plant would have been between TransCanada and OPG.

**Mr. Peter Tabuns:** Okay. In the Ontario Power Authority briefing deck, July 15, 2011, the deck says that the Ministry of Energy didn't want their directive for action to say that repayment to TransCanada Enterprises was going to be buried in the cost of the replacement plant. "Remain silent" were the words they used. They didn't want to flag that in fact the potential Kitchener-Waterloo-Cambridge plant, which was going to be much smaller than OPG, was going to have to carry this big repayment cost—

**The Chair (Mr. Shafiq Qaadri):** Mr. Tabuns, just to inform you—first of all, you have about seven and a half minutes left, which you will get in any case. There's a quorum call, so the committee has the duty and/or responsibility or option of responding to it.

**Mr. Peter Tabuns:** Ignore it.

**Mr. John Yakabuski:** Can we ignore it?

**The Chair (Mr. Shafiq Qaadri):** All right.

**Mr. John Yakabuski:** There you go. I fixed the problem.

**Mr. Peter Tabuns:** You're a magician, Yak.

**The Chair (Mr. Shafiq Qaadri):** Please continue.

**Mr. Peter Tabuns:** Were you given similar instructions, that whatever happened, costs were to be buried within the agreement?

**Mr. David Livingston:** I'm sorry, I lost the first part of what you said just because of the—

**Mr. Peter Tabuns:** Okay. The OPA internally understood that the ministry didn't want any directive to indicate that repayment or compensation to TransCanada was going to be visible in any directive that was going to be issued; it was supposed to be buried in there. Were you given any such instruction?



**Mr. David Livingston:** No, but that would have been between the OPA and the Ministry of Energy. I was working on an arbitration agreement with TransCanada. In the arbitration it was a process to get to a solution, so it didn't involve directives or anything.

**Mr. Peter Tabuns:** Did your arbitration process give a product in which the majority of risk was going to be transferred to the ratepayers, something that OPA, in its documents, says was a real problem with TransCanada? TransCanada was trying to make sure that the ratepayers took all the risk and they were absolved of risk.

**Mr. David Livingston:** In a typical arbitration process, you have an arbitrator, you have one party making their representations about what should be done and the other party making representations, and then the arbitrator decides, so that process—the arbitration agreement outlined the process, it didn't start the process, if you like, so those kinds of conversations would not even have begun.

**Mr. Peter Tabuns:** But you can structure an arbitration in a variety of ways. An arbitration can recognize that, for instance, the risk of building a plant was significantly higher than TCE had originally envisioned; in fact, that the value of the plant was going to be far less because its chances of being built were very small. Did your arbitration structure recognize the fact that TransCanada in fact had a plant that wasn't going to go anywhere?

**Mr. David Livingston:** We don't need to speculate about this. There is an arbitration agreement that was signed, and so it's probably best to just go to the agreement itself.

**Mr. Peter Tabuns:** Were you given instructions to ensure that TransCanada got the best deal it could get?

**Mr. David Livingston:** No. My brief was, is it possible to get a deal as between TransCanada and the province, meaning, is a deal acceptable to TransCanada and acceptable to the province?

**Mr. Peter Tabuns:** I think one of the difficulties that I've had with your statements that you weren't given any history is that the reason things apparently broke down is the Ontario Power Authority was pointing out that TransCanada had a plant or a contract that had a very, very low value, because there was huge risk that the plant couldn't get built at all. In fact, if you go through their documents and through their briefings, they're saying that TransCanada grossly overvalued the value of this plant, never took into account the fact that, on the face of it, they weren't going to get one built anyway, and you were given orders to put forward an arbitration process that didn't reflect the fact that this plant may well have been worthless. This contract may well have been worthless.

0910

**Mr. David Livingston:** But presumably that would have come out in the arbitration process, so that would have been presumably the province's argument. Then TransCanada would have their arguments, and the arbitrator would decide. Clearly TransCanada had a view, clearly OPA had a view, and they were not coming to

agreement. That's when I got asked to come in and see if there was a way to resolve the problem.

**Mr. Peter Tabuns:** Why did the government not just let things go forward? OPA looked at its options. It looked at the risks and made its best offer to TransCanada. TransCanada didn't accept. It comes apart. There's a court case. OPA looked at its risk, and frankly, its risk was not a lot more than it ultimately settled for. Why were you brought in when, in fact, TransCanada had a plant that may well not have been buildable?

**Mr. David Livingston:** It's probably best to ask the three about why I was brought in. I can only presume that the idea of having this settled in the courts was not felt to be the best way to go.

**Mr. Peter Tabuns:** So you were never briefed that TransCanada had significant weaknesses in its bargaining position?

**Mr. David Livingston:** I would have been briefed by the three. I would go into any discussion assuming that their case was weak. That's the nature of a negotiation. But there would have been nothing specific.

**Mr. Peter Tabuns:** Were you given any briefing in writing when the three first met with you?

**Mr. David Livingston:** No, I don't recall that.

**Mr. Peter Tabuns:** So you're taking over a project with potential liability in the billion dollars, and no paper was exchanged?

**Mr. David Livingston:** Because I was not given a negotiating mandate; I wasn't given latitude to go out and settle something for an amount of money or on any terms. My job was to come back with what was possible, and then it would be the government's responsibility and the government's right to look at that and decide "Are we prepared to live with that or not live with that?" My job was to present options, and the government's job was to decide, were those options acceptable or not?

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Peter Tabuns:** So Shelly Jamieson and company never gave you a single piece of paper when they briefed you on this whole project?

**Mr. David Livingston:** Not to my recollection.

**Mr. Peter Tabuns:** Is this common that you hand over billion-dollar projects with not a single piece of paper?

**Mr. David Livingston:** It's the characterization that I was handed a billion-dollar project. I didn't have a billion-dollar authority. I would be coming back with options, and then the analysis of those options and whatever the government chose to do would be the government deciding between itself. I—

**Mr. Peter Tabuns:** Did you know the value of the contract at issue?

**Mr. David Livingston:** Sorry?

**Mr. Peter Tabuns:** Did you know the value of the contract?

**Mr. David Livingston:** There was a huge dispute about the value of the contract.



**Mr. Peter Tabuns:** Well, no, there was a contract that had been signed with the government. Did you know how much it cost when you sat down with them?

**Mr. David Livingston:** It would have been clear what the—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns. Just before handing it off to the government side, I'd just like to let you know that you did have your full 20 minutes. The Chair thanks Mr. Yakabuski for your intervention on the quorum call.

Mr. Delaney.

**Mr. Bob Delaney:** Good morning, Mr. Livingston. Good to see you again. I just want to run down a couple of questions regarding some of your roles, both leading up to and during this period. I'm wondering whether or not you can explain a little bit about your previous role as president and CEO of Infrastructure Ontario.

**Mr. David Livingston:** My job there was to lead the company that was—we had two lines of business or I guess, by then, I think the merger with the Ontario Realty Corp. had happened, so there were now four lines of business. Once the government decided that it wanted to build a piece of infrastructure, that project was assigned to Infrastructure Ontario, and our job was then to create a procurement process by which that project would get built using alternative financing and procurement. That was one line of business.

The second line of business was to provide loans to public authorities in Ontario that were not consolidated with the province—municipalities and others—for them to build infrastructure.

A third, as part of the Ontario Realty Corp. mandate we assumed, was to look at surplus property that the province had and make recommendations to the government on what it could do with those properties.

And a fourth was to be the landlord to the public service, in effect, managing the properties that the public service inhabited.

**Mr. Bob Delaney:** It would be then fair to say that with regard to projects of this magnitude, you would have an intuitive grasp of what might be in the realm of the possible?

**Mr. David Livingston:** Yes. I think that my time at Infrastructure Ontario and my time previously—I spent most of my life negotiating relatively big agreements. This wouldn't have been dissimilar.

**Mr. Bob Delaney:** With respect to the relocation of the gas plants, your role was initially through Infrastructure Ontario and began at a time well before you became the Premier's chief of staff?

**Mr. David Livingston:** Correct.

**Mr. Bob Delaney:** Okay. I just wanted to make sure that we clarified that.

What sort of things in your previous career might have made you an appropriate choice to take on a lead role in the resolution of this matter?

**Mr. David Livingston:** Before I ran Infrastructure Ontario, I had a 30-year career in banking. Especially in my latter days in banking, I was mostly involved with the

development of strategy and doing mergers and acquisitions work, so I had a fairly broad background in negotiating agreements between private sector companies. I think the way the government looked at that was that they had, with me and with people at Infrastructure Ontario, expertise in negotiating with the private sector that they felt was of use in trying to make sure that we got the best deal for the taxpayer.

**Mr. Bob Delaney:** Why would Infrastructure Ontario, specifically, have been involved in this type of negotiation?

**Mr. David Livingston:** Most of the people who worked there were from the private sector. All the projects that we had done, everything that we were doing, were essentially in negotiation with the private sector, so we had expertise in doing this and how to do it. The government felt that if we came back with options or views, they were ones as being in the taxpayers' interests; they were views that they could trust.

**Mr. Bob Delaney:** To encapsulate, you would say that Infrastructure Ontario had that unique ability to support this type of negotiation through the agency's and your own experience with private sector partnerships and contracts?

**Mr. David Livingston:** Fair enough.

**Mr. Bob Delaney:** Okay. That's good.

I want to talk to you a little bit about the commercial sensitivity of the negotiations and discussions. Again, based on your career path, I'm extrapolating that you would have obviously been well versed in complex contract negotiations with private companies.

**Mr. David Livingston:** Very much so.

In any negotiation, the thing you want to avoid is having the other side know what your negotiating parameters are, to know how far you're prepared to go. You're trying to get the best deal possible, so the less that they know about your position, the better.

**Mr. Bob Delaney:** Based on your expertise and experience, would it be fair to describe the negotiations to relocate either or both power plants as commercially sensitive?

**Mr. David Livingston:** Yes.

**Mr. Bob Delaney:** Okay. While the negotiations were ongoing, a request was made by the estimates committee for the production of all correspondence related to these two gas plants by the Minister of Energy, the Ministry of Energy and the OPA. You're aware of that?

**Mr. David Livingston:** I'm aware, yes.

**Mr. Bob Delaney:** An opinion: How significant do you think the risks would have been to either your negotiations or the negotiations in general if commercially sensitive details had been made public before the deals were finalized?

**Mr. David Livingston:** I think any possibility that the people we were negotiating with could know what we were thinking or where we would go would have been prejudicial to getting the kind of deal that was in the interests of taxpayers.



**Mr. Bob Delaney:** Earlier in the questioning, it was suggested that you could spend whatever you wanted. Would you just recap and clarify your role through that 2011-12 time frame?

0920

**Mr. David Livingston:** I was never given a mandate to spend any amount of money. I was never given a budget, and if I had been given it, I would have turned it down because my job was to create options—I'd even say that differently. My job was to figure out what was possible between the government and TransCanada and to come back with those options for the government, then, to consider. Were they prepared to consider those options or any other possibilities? So I was a facilitator or an intermediary; I did not have a mandate to get a deal.

**Mr. Bob Delaney:** Would the public interest have been protected when it came to that document production motion on the gas plants, given that the motion would have had everything made public?

**Mr. David Livingston:** If everything had been made public, then it would have been very difficult to get the deal that we got, I believe.

**Mr. Bob Delaney:** Okay. Again, about the work that the government did with regard to Oakville and some of the details around that: I want to ask you a question about risks and talk to you about an issue that arose earlier this week regarding the Oakville power plant relocation.

There were some suggestions from our colleagues opposite that our government bailed out TransCanada Energy because the company was concerned the project wouldn't be able to move forward as a result of municipal opposition, in this case, from the town of Oakville. My understanding is that while it's true the municipality had enacted bylaws to try and prevent construction, there was no assurance that these bylaws wouldn't ultimately be overruled by the Ontario Municipal Board, and in the case of the siting of the Mississauga gas plant, the Ontario Municipal Board overturned the municipality's appeal and ordered it to issue a building permit for the construction of the plant. This could very well have happened in Oakville if the government had failed to intervene, especially since this site was also zoned industrial in the city's official plan.

A question: Is it speculation if our colleagues opposite assume that the plant would not have gone forward based only on the municipal bylaws, and would it have been responsible then for the government to simply leave things up to chance?

**Mr. David Livingston:** There are different ways of saying "leaving it up to chance." It's leaving it up to the courts, and so to leave it to a judge to decide as to whether or not a claim for damages by TransCanada was valid—that would have been risky.

**Mr. Bob Delaney:** When you say "risky," what are some of the downsides to the public purse, to the government of Ontario?

**Mr. David Livingston:** If it's in front of the courts, both sides make arguments. If the courts rule in favour of TransCanada, then at that point the courts would be

assuming what was the value of that contract and would award damages to TransCanada that the province would have to pay. So the goal was to try and get a deal where value was created for the money that was going to get paid to TransCanada as opposed to just writing them a cheque for the value of the contract.

**Mr. Bob Delaney:** So a lot of the work that you did really was in the realm of the mitigation of risk?

**Mr. David Livingston:** Correct.

**Mr. Bob Delaney:** Okay. If the province had waited to intervene, as has been suggested, if permits had been issued and construction started, might the sunk cost of relocating the Oakville power plant have been much higher?

**Mr. David Livingston:** Most assuredly.

**Mr. Bob Delaney:** A couple of questions on the description of projects, both in your experience at IO in the government and in the private sector, particularly about the use of either project or code names: There's been a lot of mention made that terms were used to describe these two projects in various ways—"vapour," "fruit salad" and a whole lot of other food-related names. Mr. Wallace testified before us earlier that—and I'll use his words—"the use of code names for commercial transactions is routine in the Ontario public service. It covers essentially all major commercial transactions with which we have been engaged and which" the government "has undertaken."

Again, I'm going to ask you, based on your experience both inside and outside government, is it standard practice in the private and public sectors to use either project or code names when commercially sensitive projects are under discussion?

**Mr. David Livingston:** Absolutely.

**Mr. Bob Delaney:** Okay. If a suggestion is made that the code names used in these two instances were a cover-up—would it be reasonable to assume, for example, that in your years at the TD Bank, the TD Bank used code names?

**Mr. David Livingston:** Every project I was ever involved with would have had a code name.

**Mr. Bob Delaney:** Even at the TD Bank, where FOI laws don't apply?

**Mr. David Livingston:** Absolutely.

**Mr. Bob Delaney:** Why are code names used, then?

**Mr. David Livingston:** When you are talking about what's going on, there's always the chance that a document could be left on a subway, that something could get intercepted. If you were looking at doing a deal, doing a merger, doing an acquisition, and it became public knowledge you were doing it, then there would be information in the public domain that could affect the share price. That's just not on. It is to make sure that there's not inadvertent communication of a company's plans before they should be publicly announced.

**Mr. Bob Delaney:** So your code or project names are, in fact, an act of due diligence in both the public and the private sector?

**Mr. David Livingston:** That's a great way of putting it.

**Mr. Bob Delaney:** Okay. A few questions about the motion made at the estimates committee in May 2012 for correspondence relating to the two gas plant relocations—and just for clarity, at this point now, you are serving as the chief of staff to the Premier, correct?

**Mr. David Livingston:** I think it probably happened about exactly the same time.

**Mr. Bob Delaney:** So you would be aware, then, that 56,000 documents were provided to the committee by both the Ministry of Energy and the Minister of Energy, and the OPA in furtherance to that request?

**Mr. David Livingston:** Very much aware.

**Mr. Bob Delaney:** What are some of the issues in producing that much paper in that short a span of time?

**Mr. David Livingston:** I think others have a much better view of what that looks like than I do. It's an extraordinary amount of paper to go through—all the files with all the people and all the possible references to a particular project is an arduous task. My experience would have been in responding to an FOI request at Infrastructure Ontario. I have experience of it from that point of view.

**Mr. Bob Delaney:** Would you have any reason to believe that the Minister of Energy or the Ministry of Energy didn't act in good faith in trying to comply with the request?

**Mr. David Livingston:** None whatsoever.

**Mr. Bob Delaney:** And the Ontario Power Authority?

**Mr. David Livingston:** Same.

**Mr. Bob Delaney:** Based on your role as the chief of staff to the Premier during this period, in your observation and opinion, were best efforts made to provide all of the documents that responded to the request?

**Mr. David Livingston:** Yes.

**Mr. Bob Delaney:** I have a few questions regarding the former Minister of Energy. Part of the committee's job is, in fact, to review the Speaker's finding of a prima facie case of privilege with respect to the production of documents by the Ministry of Energy, the Minister of Energy and the OPA. As a result of this finding, there is a potential that the former Minister of Energy—a long-time member of the House, also a former Attorney General—might be at risk, depending upon the outcome of this committee. Given your testimony so far, in which you stated you were not aware of any effort to obstruct the production of documents and also that there was indeed commercially sensitive information at stake—issues of solicitor-client privilege during commercially sensitive negotiations—do you have any insight on whether or not contempt charges are appropriate?

**Mr. David Livingston:** I think Minister Bentley always, in my experience with him generally and in anything specific, was trying to do his level best to protect the interests of the taxpayer, respect the direction, the request for information from the committee and just more generally try and do the right thing. I have never once thought that he was wavering from that path. All the

decisions that he made were trying to take into account everybody's interests, everybody's rights. For that reason alone, I think that to hold him in contempt was incorrect.  
0930

**Mr. Bob Delaney:** Okay. I'd like to put a document in front of you, if I may. I'll give it to the rest of the committee through the Clerk. I'll give you a second to have a look at it.

In looking at the motion made by Mr. Leone on the 16th of May of last year, 2012, in your reading of it, at whom is the motion directed?

**Mr. David Livingston:** It's directed at the Minister of Energy, the Ministry of Energy and the Ontario Power Authority.

**Mr. Bob Delaney:** A couple of questions that border on the obvious: Does the motion mention Infrastructure Ontario or the Premier's office?

**Mr. David Livingston:** No.

**Mr. Bob Delaney:** And dates: Is there a timeline within which the motion asks for the search to take place?

**Mr. David Livingston:** No.

**Mr. Bob Delaney:** So it doesn't specifically ask for documents in 2012.

**Mr. David Livingston:** It does not ask for documents in 2012.

**Mr. Bob Delaney:** Okay. Thank you. I'd like to distribute just one additional document. Looking at the parts that are underlined—and this is just in the first paragraph. You don't have to read the lot. In the first paragraph, can you tell us who that motion is directed to?

**Mr. David Livingston:** The government of Ontario—it would appear to be all ministries, all ministers' offices, Cabinet Office, the Premier's office, Infrastructure Ontario and the Ontario Power Authority.

**Mr. Bob Delaney:** Okay. The time frame: Does the motion extend into 2012?

**Mr. David Livingston:** Yes.

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Bob Delaney:** All right. As we just wrap up this one, I just would like to ask—we would then agree that if this motion, if passed—

**Mr. Rob Leone:** Point of order, Chair.

**The Chair (Mr. Shafiq Qaadri):** Point of order. Mr. Leone?

**Mr. Rob Leone:** I believe this motion was ruled out of order.

**The Chair (Mr. Shafiq Qaadri):** I don't think it has been re-presented, but I take your point.

In any case, if you could wrap up, Mr. Delaney. Forty seconds.

**Mr. Bob Delaney:** I am in the process of wrapping up. In fact, the motion was voted on, ergo it was in order.

So the motion, then, if passed, was far more comprehensive than the original motion, and you may or may not be aware that, of course, the opposition voted against this more comprehensive motion.

In conclusion, Chair, what I'd just like to say is, it's important for the record that we remind the committee that the scope of Mr. Leone's original motion was quite



narrow, and the government tried unsuccessfully to extend the search. If they wanted more documents, I don't understand why they—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney.

Just to clarify, the motion originally as presented was out of order. Then, when paragraph number 2 was removed, it was then in order. Then the voting proceeded.

I would now offer the floor to the Conservatives. Ten minutes, Mr. Fedeli.

**Mr. Victor Fedeli:** Thank you, Chair. Before I jump into the next phase, I kind of want to recap where we are so far here.

TransCanada turns down a \$712-million offer. You're brought in as the fixer. You have no dollar ceiling and no energy expertise, and you craft five options. The OPA then confirms the Lennox option cost close to \$1 billion. You're the chief of staff to the Premier who came out that day and announced the deal cost \$40 million. This is where, in my opinion, the cover-up begins.

Let's turn our attention to that. When was the term "Project Vapour" initially used to reference the Oakville plant?

**Mr. David Livingston:** I think I invented that name, to be honest. I think it would have been in July—

**Mr. Victor Fedeli:** That was my next question. Were you the author of "Project Vapour"? You came up with "Project Vapour"?

**Mr. David Livingston:** I think I am the author of "Project Vapour."

**Mr. Victor Fedeli:** You think you are, or you are?

**Mr. David Livingston:** I'm pretty sure. I don't remember seeing it before. I'm pretty sure I'm the one that named it.

**Mr. Victor Fedeli:** What about "Project Vapour-lock"? Was that you, too?

**Mr. David Livingston:** No. Once I became involved with Oakville, it was felt by the government that I had a job at Infrastructure Ontario, and Oakville was busy enough that somebody else should be dealing with Mississauga. That would have been separate from me.

**Mr. Victor Fedeli:** You might have touched on this earlier, but my question is, why was that code name necessary?

**Mr. David Livingston:** Life experience: Every project that I've ever been involved with in my life that had commercial sensitivity to it, I put a code name on it.

**Mr. Victor Fedeli:** Jim Wilson, the former Minister of Energy—do you know what he told us the code name for the Lakeview project was?

**Mr. David Livingston:** What?

**Mr. Victor Fedeli:** The Lakeview project.

When was the decision made not to comply with the two-week deadline ordered by the estimates committee in May 2012?

**Mr. David Livingston:** I'm not sure I can answer that.

**Mr. Victor Fedeli:** Who could answer that?

**Mr. David Livingston:** The information was requested from the Ministry of Energy, the Ontario Power Authority and I forget what the third one was—presumably them.

**Mr. Victor Fedeli:** Who was involved in the decision to refuse that committee's order? This is a serious decision to make. There's an order of the estimates committee to supply documents by May 2012. A pretty serious decision was made.

**Mr. David Livingston:** May 2012?

**Mr. Victor Fedeli:** Yes, May 2012—it was the estimates committee. That's a fairly significant and, in some cases, as we've seen now, life-altering, decision. Who was involved in making that decision?

**Mr. David Livingston:** I would repeat: The request was made of the parties that were in the motion. The decision would be made by them.

**Mr. Victor Fedeli:** Again, who? So I can actually write this down.

**Mr. David Livingston:** The direction was to the Minister of Energy, the Ministry of Energy and the Ontario Power Authority.

**Mr. Victor Fedeli:** You think the Minister of Energy, the Ministry of Energy and the Ontario Power Authority made the decision to refuse the committee's order to turn documents over in May 2012? That's what you're saying today?

**Mr. David Livingston:** I think all of the parties would have been, as was talked about previously, trying to balance the provision of the information with the commercial negotiations that were going on and what was in the best interests of the taxpayer.

**Mr. Victor Fedeli:** Was the Premier consulted? As his chief of staff, I presume you would know. Was the Premier consulted? Was he told, "We're not going to turn these documents over"? Was he involved in that discussion?

**Mr. David Livingston:** No.

**Mr. Victor Fedeli:** Not beforehand. So when the decision was made, when the energy minister said, "I'm not turning over any documents to you," to this committee, the Premier was not aware that that was the tack that was going to be taken, that the documents were going to be withheld from the committee?

**Mr. David Livingston:** No.

**Mr. Bob Delaney:** Chair, on a point of order: The questions by Mr. Fedeli are making allegations that he has no basis in making—

**Mr. Victor Fedeli:** I'm not making any allegation; I'm asking a question—

**Mr. Bob Delaney:** You're making an allegation—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney. Please continue, Mr. Fedeli.

**Mr. Victor Fedeli:** Thank you, Chair. I appreciate that, Chair.

So other than the Minister of Energy, the Ministry of Energy and the OPA, to the best of your knowledge, nobody else was involved in withholding documents from the estimates committee in May 2012?

0940

**Mr. David Livingston:** I'm not sure I understand. The request was of those entities to provide information. Is the question, why did other entities not provide information?

**Mr. Victor Fedeli:** No. I'm asking you to confirm. That's your understanding: that no one else was involved in the decision to withhold the documents?

**Mr. David Livingston:** No.

**Mr. Victor Fedeli:** Okay. So let's just turn our attention a little bit to the documents themselves. When JoAnne Butler, the vice-president of OPA, was here, she testified under oath that the documents from the OPA were delivered to the government unredacted. As a chief of staff, what would you think happened then to the documents that we received that were indeed redacted? Can you offer any insight into that?

**Mr. David Livingston:** I would repeat that the ministry would have been trying to balance the request for the information with the commercial sensitivity of what was going on to try and protect the taxpayer. So they would be taking out information that, if it got into the public domain, could be prejudicial to trying to get a deal. I would suspect that they were also taking out—just from experience, I've often seen in these things that there would be information that's completely extraneous to the request, so they'd be also taking out anything that would be of that nature.

**Mr. Victor Fedeli:** In document number 6 that's in the package, the subject is "Vapour," the code name that you came up with. Every item in this document has been redacted. Every line—

**Mr. David Livingston:** Sorry. Tell me again, which one are you looking at?

**Mr. Victor Fedeli:** It's PC document number 6. It's the last one that we have here.

**Mr. David Livingston:** Okay.

**Mr. Victor Fedeli:** You're on this file as well. This is sent to you from Shelly Jamieson. It's on Project Vapour, and then as you move up the whole chain, it's redacted. As we go through the next page, it's redacted, and the next page, it's redacted. So, basically my question is, in your opinion, to your knowledge, who redacted these documents?

**Mr. David Livingston:** I don't know.

**Mr. Victor Fedeli:** You don't know. Okay. They're either whited out or blacked out. Do you recall this email chain that you're in? If you go to page 2 of 6, the second page, it's from Shelly Jamieson. It's to you, "Subject: Vapour," and then as you go up, you see the chain. Do you have any idea what would have been redacted there, as you go through any of these documents? There's things blacked out. There's one about orange, but I don't think it's the scandal Ornge; I think they spell "orange" in this one differently.

**Mr. David Livingston:** I don't know.

**Mr. Victor Fedeli:** Okay. Who in the government, then—I mean, somebody turned these documents over to the estimates committee.

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Victor Fedeli:** Who in the government was responsible for reviewing or redacting these documents?

**Mr. David Livingston:** I'm presuming it would have been the three groups that were asked for the information in the first place.

**Mr. Victor Fedeli:** Did you ever order any documents to be redacted or removed?

**Mr. David Livingston:** I didn't and I would have no authority to order that kind of thing.

**Mr. Victor Fedeli:** There are documents here that we've held up that are redacted, and as was said in earlier testimony and we've learned in earlier testimony from Ms. Turnbull from the cabinet, there are documents that aren't here. You don't know who would have ordered the documents to be removed or redacted?

**Mr. David Livingston:** No.

**Mr. Victor Fedeli:** Well, I find this to be an absolutely fascinating discussion and, quite frankly, I'm quite surprised that—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli. While you can continue the fascination, I present the floor to Mr. Tabuns. Ten minutes.

**Mr. Peter Tabuns:** Mr. Livingston, at the Ontario Power Authority board meeting that you attended Monday, August 1, 2011, there was a minute after you had left which I hope you are able to comment on because you were contacted about it. "The board members indicated that its primary concern was to avoid having the Ontario Power Authority pay compensation that was not justifiable in the interests of the Ontario ratepayer and also was of the view that there were too many disadvantages for the OPA arising out of the arbitration agreement as currently proposed. Management was asked to advise Mr. Livingston of these views."

**The Chair (Mr. Shafiq Qaadri):** Mr. Tabuns, you're willing to make that document available to the other members of the committee?

**Mr. Peter Tabuns:** It's PC document number 1.

**The Chair (Mr. Shafiq Qaadri):** Thank you.

**Mr. David Livingston:** That's not what I have as PC document number 1.

**Mr. Peter Tabuns:** Standby then?

**Mr. Victor Fedeli:** It's a supplementary document.

**Mr. Peter Tabuns:** Standby PC document 1, last page.

Did they contact you about their concerns regarding the arbitration?

**Mr. David Livingston:** I am trying to remember back to the time. I went to the board meeting. I'm not a director. I wouldn't have been privy to whatever the board's concerns are, whatever the board's decisions are. But OPA had to sign the arbitration agreement for it to be valid. Right up until the time that the arbitration agreement was signed, there were negotiations going on, mostly between the lawyers involved—so it would have been OPA's lawyers, the government's lawyers and TransCanada's lawyers—to get to wording in the arbitration agreement that was acceptable to everybody.



I am presuming that by virtue of the fact that OPA ultimately signed, they got to a set of terms or a set of words that they were prepared to agree with.

**Mr. Peter Tabuns:** Did they advise you that they didn't feel the arbitration agreement was one that protected ratepayers?

**Mr. David Livingston:** I don't recall having a specific conversation like that, because at that point in the process, it was really—especially by this date, we were down to lawyers working out words in an agreement. In the principle of the agreement, there was agreement that we were going to do this.

**Mr. Peter Tabuns:** On a second matter, I may have misunderstood your earlier testimony. Did you ever meet with Chris Morley about this matter? Did you ever brief Chris Morley about this matter?

**Mr. David Livingston:** I saw in some of these documents here that Shelly was saying that there was an agreement to brief Chris. I don't remember being party to that. In order for everybody to be able to sign the arbitration agreement, I knew that cabinet authority was needed. But I don't remember being part of that briefing of Chris. I don't know who would have briefed Chris. I'm hesitating there because it's possible that I was; I just don't remember.

**Mr. Peter Tabuns:** Setting that meeting aside, did you ever have any other meetings with Chris Morley?

**Mr. David Livingston:** I met with Chris all the time.

**Mr. Peter Tabuns:** What was the role of Shelly Jamieson in all of this?

**Mr. David Livingston:** Going back to the original statement, when I was brought into this, there were three people who, in effect, I was reporting to on the file. There was Shelly Jamieson, who was the secretary of cabinet; David Lindsay, who was the Deputy Minister of Energy; and Murray Segal, the Deputy Attorney General.

**Mr. Peter Tabuns:** What was Shelly Jamieson's role in pulling this together?

**Mr. David Livingston:** To figure out if there was a resolution between the government, OPA and TransCanada that everybody could agree to and avoid, presumably, a lawsuit that would have been deemed to be too risky.

**Mr. Peter Tabuns:** Was she coordinating with other bodies—the Ontario Power Authority, OPG? Was she the person at the centre of decision-making here?

0950

**Mr. David Livingston:** I'd think you'd have to ask her who she was talking to.

**Mr. Peter Tabuns:** It was not your perception that she was at the centre of the decision-making?

**Mr. David Livingston:** Certainly the centre of my decision-making.

**Mr. Peter Tabuns:** You were chief of staff in the fall of 2012 when the MOU was signed with TransCanada.

**Mr. David Livingston:** Yes.

**Mr. Peter Tabuns:** Did that MOU go to cabinet for approval?

**Mr. David Livingston:** Not to my knowledge.

**Mr. Peter Tabuns:** The cabinet had no approval authority in this at all?

**Mr. David Livingston:** The terms under which TransCanada and the government would have ultimately agreed would have been approved, I think, by treasury board and then ratified by cabinet, so there was no—before any contract could be entered into, especially one where there's money involved, there would have had to be some sort of cabinet-level approval for it and I think it was treasury board.

**Mr. Peter Tabuns:** So treasury board reviewed the memorandum of agreement. Did they inform the cabinet of the value, the cost implications of signing off on this?

**Mr. David Livingston:** I was not at the meeting. I don't know. You'd have to ask somebody who was at the meeting.

**Mr. Peter Tabuns:** Were you chief of staff when the agreement was reached with Greenfield, with the Mississauga developers?

**Mr. David Livingston:** Yes, I think so. That would have been in June 2012, somewhere around there.

**Mr. Peter Tabuns:** Some time in the summer.

**Mr. David Livingston:** Yes.

**Mr. Peter Tabuns:** So at that point you were chief of staff.

**Mr. David Livingston:** Yes.

**Mr. Peter Tabuns:** Did that settlement go to cabinet as well?

**Mr. David Livingston:** Similarly, before the agreement could be signed as between the parties, it would have required some sort of sign-off. I think it was treasury board, which then all gets ratified by cabinet.

**Mr. Peter Tabuns:** Were there any lessons that you drew from the experience with the Mississauga plant about either dealing with those developers, with this kind of private power deal, or how one resolves these conflicts in the future?

**Mr. David Livingston:** The Greenfield agreement, the effort to negotiate with the parties, the Oakville agreement were done in good faith by everybody involved. I feel like the best possible job was done to protect the taxpayer and to get something that created value.

**Mr. Peter Tabuns:** Could you provide us with copies of the treasury board estimates of the value of the settlement with Oakville?

**Mr. David Livingston:** I can't. I don't work in the government anymore, so I would have no ability to do anything like that whatsoever.

**Mr. Peter Tabuns:** Then, just as notice to you, Chair, I'll be moving a motion that we request those estimates from treasury board, their assessment of the cost of the settlement.

**The Chair (Mr. Shafiq Qaadri):** Noted, Mr. Tabuns. About a minute.

**Mr. Peter Tabuns:** Mr. Livingston, in your private dealings prior to being in government, if you were given carriage of a conflict in which \$1 billion was at issue, would you not have been given some paper on that?

**Mr. David Livingston:** Paper, in my experience, paper that matters, comes when you start to figure out what is the nature of the deal or what is possible. So to me, it's not unusual that you start to do analysis and you start to work through numbers once you have concrete views or concrete examples of what is possible. Paper before the fact, when you don't have any idea of what is possible to accomplish, is information but it's not essential.

**Mr. Peter Tabuns:** I guess I just find it extraordinary that you would be handed a file of this scale with these risks and you wouldn't have been informed—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns.

To the government side, Mr. Delaney.

**Mr. Bob Delaney:** Thank you, Chair. A few, I think, final questions, Mr. Livingston: In serving with the Premier as his chief of staff, how many election campaigns have you worked on?

**Mr. David Livingston:** Election campaigns?

**Mr. Bob Delaney:** Election campaigns.

**Mr. David Livingston:** That would be none.

**Mr. Bob Delaney:** Okay, that's fine. So the Premier didn't hire you because of your political experience.

**Mr. David Livingston:** No; that would be safe.

**Mr. Bob Delaney:** Okay. But in the time that you worked for Infrastructure Ontario and, of course, here at Queen's Park for a number of years, you've likely had the opportunity to get to know the former Premier pretty well.

**Mr. David Livingston:** Yes.

**Mr. Bob Delaney:** Would you characterize him as a man of integrity?

**Mr. David Livingston:** I would say that the reason I came to Infrastructure Ontario in the first place was because I had a very powerful view that this was a man I could work for and respect. Then when I moved from Infrastructure Ontario to become his chief of staff, it was because I believed he was a man of great integrity and great ability. I have no reason to change that today.

**Mr. Bob Delaney:** Okay. Did the former Premier work very hard to do the right thing?

**Mr. David Livingston:** Always.

**Mr. Bob Delaney:** In the time that you worked with him, did he serve honourably on behalf of both his constituents in Ottawa South and the people of Ontario?

**Mr. David Livingston:** Always. I hold the man in the highest regard, and I always will.

**Mr. Bob Delaney:** Okay, thank you. Just a little clarification question: Peter Wallace gave testimony here regarding a point that Mr. Fedeli raised earlier on the redaction of documents. Mr. Wallace said a few days ago, "My understanding would be that there was non-responsive information associated with this. It was in accordance with the ordinary practices of document disclosure...."

Is it normal that if a request is made for a document, and the document contains portions that are outside the

scope of the request or unrelated to the request, that they would be redacted?

**Mr. David Livingston:** Absolutely.

**Mr. Bob Delaney:** Is there any doubt that from the actions and pledges by both parties leading up to the locations of both power plants—as well as the testimony, if you followed it, of some of the witnesses here—that any of the three parties, if in power, would have cancelled and relocated both power plants?

**Mr. David Livingston:** This all happened before I became involved with the file, either at Infrastructure Ontario and certainly before I came into the Premier's office. So I don't know any more about that than anybody else who's just reading it. It would appear that everybody had the same view, but that is hearsay.

**Mr. Bob Delaney:** Okay. Based on your experience and observations, would you have any recommendations as to how electricity generation sites might be sited in the future?

**Mr. David Livingston:** I think there's a fairly strong view, that was expressed by the mayors of the two areas, that local community input needs to be taken into account. I fully subscribe to that.

**Mr. Bob Delaney:** How do you think that we, as a government, as Ontarians, can best engage local leaders and organizations throughout the process of choosing where to generate electricity?

**Mr. David Livingston:** I appreciate the question, and I appreciate the intent. I think that there are people who are way more qualified than I am to be able to come up with answers to that.

**Mr. Bob Delaney:** Okay, fair enough. I'm going to hand you one last document and call your attention to a highlighted part of page 2. The Clerk will distribute copies for everybody.

We've heard some suggestions that, when the member for Bruce-Grey was the Minister of Energy, he called the project to deal with the Lakeview generating site "the Lakeview project." But that, of course, while true, is only part of the practice at the time. On page 2, it says "In all, the ministry and its advisers compiled 42 documents on the deal," which refers back to the lease of equipment at the Bruce Power plant—"which it code-named Project Boss for internal secrecy reasons."

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Now, I understand that this is a news article, but in referring to a project at the Bruce nuclear power development and calling it Project Boss, do you feel that there was any intent to engage in a cover-up in the use of a code name at that time?

**Mr. David Livingston:** As I said before, I think it's very common practice, especially when you have confidential matters, to put a code name on it. This would seem consistent with that practice.

**Mr. Bob Delaney:** I think we have taken that subject and beaten it to death.

In the work that you were asked to do, is energy expertise necessary as a precondition to deal with the



different parties in trying to arrange a settlement such as you did?

**Mr. David Livingston:** I would characterize this as a commercial negotiation, because I was not given a mandate to sign a deal or to spend money. It was to come up with what is commercially possible between disputing parties. I think it is more commercial expertise that's required than energy expertise because once the options have been identified, then the people who have the expertise can analyze those options and decide whether they're acceptable or not. So I would have said that the expertise that was required here was more the kind that I had and people at Infrastructure Ontario and others that were involved had.

**Mr. Bob Delaney:** Then, on that note, thank you very much for your time this morning.

Chair, we're done.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney and—

**Mr. Rob Leone:** Point of order, Chair.

**The Chair (Mr. Shafiq Qaadri):** Yes, Mr. Leone.

**Mr. Rob Leone:** I would like to table some documents with the committee with respect to an email that I have here that I think contradicts some of the testimony that we've seen—

**The Chair (Mr. Shafiq Qaadri):** It's not necessary to have a point of order for that. I'm just waiting for copies of the motion filed by Mr. Tabuns and once we have the copies issued to all members of the committee, then we can—

**Mr. Rob Leone:** I do wish also, Chair, to state our intention to recall this witness on April 9. I want to provide that notice in committee today because we feel that there are some contradictions in the testimony that we've seen; we have documents stating such and we want to ask further questions of this witness.

**The Chair (Mr. Shafiq Qaadri):** Thank you for that notice, Mr. Leone. Duly noted.

Mr. Leone, the next witness is an NDP witness.

**Mr. Rob Leone:** On April 9, our next slot.

**The Chair (Mr. Shafiq Qaadri):** Oh, your next slot. That's fine. Fair enough.

**Mr. Bob Delaney:** Chair, may I ask the purpose of this request?

**The Chair (Mr. Shafiq Qaadri):** You're absolutely welcome to ask the purpose, Mr. Leone.

**Mr. Rob Leone:** We are entitled to recall witnesses, as we've agreed to in the subcommittee. We feel, based on some of the testimony that we've heard today, that there are more questions to be asked based on the testimony we've heard. We feel, frankly, that this witness has more information than he's giving us and we want to ask further questions of this witness.

**Mr. Bob Delaney:** Are you making a value judgment on—

**The Chair (Mr. Shafiq Qaadri):** Mr. Delaney, you're welcome to comment, but I think it's within, as you know, the protocol of the committee that witnesses

can be called back at will. So I would respectfully ask, then, before this degenerates too much further, to allow that to stand.

We have a motion. Mr. Tabuns, would you just mind reading it again for the—

**Mr. Peter Tabuns:** I don't mind reading it at all.

I move that the treasury board be asked to provide the Standing Committee on Justice its assessment of the cost of the settlement MOU—memorandum of understanding—between TransCanada Enterprises, the Ontario Power Authority and the Ministry of Energy as soon as possible.

**The Chair (Mr. Shafiq Qaadri):** And just before we entertain this motion, I'd like to thank you, Mr. Livingston, for your presence and your endurance. As you've heard, you'll likely be invited back. So thank you.

The motion is in order. Are there any comments before we take a vote on the motion? Mr. Delaney?

**Mr. Bob Delaney:** A five-minute recess.

**The Chair (Mr. Shafiq Qaadri):** Five-minute recess. Fair enough. Five minutes. Please, let's keep it to five minutes.

*The committee recessed from 1005 to 1014.*

**The Chair (Mr. Shafiq Qaadri):** Thank you, colleagues. We're back in session, as Mr. Tabuns has duly moved this particular motion, as you know, in order and now before the committee. Mr. Delaney.

**Mr. Bob Delaney:** Peter, in order to be helpful—I know we have to craft these things on the fly and do them quickly. When you use the word “assessment,” can you be in any way more specific or more helpful on the word “assessment” so that whoever it is who's tasked with responding to this knows what it is they're looking for?

**Mr. Peter Tabuns:** That's a fair question, Mr. Delaney. My response would be that the treasury board would have taken this memorandum of understanding—I gather from the witness that the treasury board sent it on to cabinet. They would have assessed the value of this, or I am assuming they would have assessed the value of this, to let cabinet know the quantum of dollars they were voting on. So in the treasury board's assessment of the MOU they would have provided, or should have provided, a dollar value. We would like to see that dollar value.

**Mr. Bob Delaney:** Okay, so documents arising from the memorandum of understanding.

**Mr. Peter Tabuns:** Yes.

**Mr. Bob Delaney:** Okay. That's all.

**The Chair (Mr. Shafiq Qaadri):** Thank you. Are there any further questions before we vote on this particular motion? Seeing none, those in favour of the motion moved by Mr. Tabuns? Those opposed? Motion carried.

There's no further business before the committee. There is a motion by Mr. Leone, which we'll deal with later, but we're adjourned till April 4.

*The committee adjourned at 1016.*







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**Official Report  
of Debates  
(Hansard)**

Thursday 4 April 2013

**Journal  
des débats  
(Hansard)**

Jeudi 4 avril 2013



**Standing Committee on  
Justice Policy**

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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE POLICYCOMITÉ PERMANENT  
DE LA JUSTICE

Thursday 4 April 2013

Jeudi 4 avril 2013

*The committee met at 0930 in room 151.*

## MEMBERS' PRIVILEGES

**The Vice-Chair (Mrs. Laura Albanese):** Good morning, everyone.

**Mr. John Yakabuski:** Good morning, Madam Chair.

**The Vice-Chair (Mrs. Laura Albanese):** Thank you. I call this committee of the justice policy to order.

## MS. JESSE KULENDRAN

**The Vice-Chair (Mrs. Laura Albanese):** We are continuing our hearings, and this morning we welcome Ms. Jesse Kulendran. I hope I pronounced that correctly.

**Ms. Jesse Kulendran:** That was pretty good.

**The Vice-Chair (Mrs. Laura Albanese):** To begin with, as we do with all witnesses, we would ask you to swear an oath, which I would invite our Clerk to administer.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Do you solemnly affirm that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth?

**Ms. Jesse Kulendran:** I do.

**The Vice-Chair (Mrs. Laura Albanese):** You will have five minutes for your opening remarks, and after that we'll go in rotation. Each party will have 20 minutes, and after that, another rotation of 10 minutes. We will be starting with the NDP side since you are a witness who has been called by the NDP.

You may start your opening remarks at any time.

**Ms. Jesse Kulendran:** Thanks, Chair. Good morning. My name is Jesse Kulendran. I'm grateful for the opportunity today to provide some clarity on my role at the ministry and to respond to any questions that you may have.

I would like to begin by sharing a little bit about my background. Following four years as a part-time legislative usher in the House, I began working for a member of provincial Parliament in September 2005. In August 2006, I moved on to work for a now retired minister. I worked as a political staffer for just over three years in total.

In December 2008, I had an opportunity and joined the Ontario public service. For the past four years, I have had

the opportunity to work in various areas of the Ministry of Energy, from the communications branch to the deputy minister's office; and then in the renewables and energy efficiency division.

In December 2009, I was asked to temporarily assist the minister's office to support an interim minister. I assisted that minister's office for three months and returned to my position in the public service at the ministry in February 2010.

As a public servant in the Ministry of Energy, I have had the privilege of working on a number of files in various capacities, including assisting with the ministry's preparation and attendance at the Standing Committee on Estimates in May 2012.

In June 2012, I took on my current position as the acting manager for conservation policy at the Ministry of Energy. Since that time, I have been asked on a couple of occasions to assist the deputy minister's office, and in late August, I was asked by the deputy minister's office to assist with the preparation to release documents related to the cancellation of the Oakville and Mississauga gas plants, as requested by the Standing Committee on Estimates. As a result, I spent roughly a week at the end of August working in the deputy minister's office before returning to my current position.

Thank you for allowing me this time to provide some background, and I welcome any questions that the committee may have.

**The Vice-Chair (Mrs. Laura Albanese):** Thank you very much for your presentation. I will now turn it over to Mr. Tabuns.

**Mr. Peter Tabuns:** Thank you, Madam Chair, and good morning. Thanks, Ms. Kulendran.

First question: Can you provide us with your calendar or your business diary for August 22, 2012?

**Ms. Jesse Kulendran:** I can absolutely, if that is the request by committee, provide that information.

Sorry, you meant my calendar?

**Mr. Peter Tabuns:** From that date—your appointments and notes of meetings that you had on August 22, 2012.

**Ms. Jesse Kulendran:** Certainly.

**Mr. Peter Tabuns:** Okay. Thank you. Did you meet with Kristin Jenkins and Ziyaad Mia on August 22, 2012?

**Ms. Jesse Kulendran:** I did.

**Mr. Peter Tabuns:** How long was that meeting?

**Ms. Jesse Kulendran:** The meeting began at 11 a.m. and was roughly, I believe, two hours in length.

**Mr. Peter Tabuns:** So 1 p.m., okay. You should have a document there—

**Ms. Jesse Kulendran:** I do.

**Mr. Peter Tabuns:** —a memo dated October 3, 2012, to Colin Andersen, head of the Ontario Power Authority, written by Kristin Jenkins, who is vice-president of communications for the OPA. She wrote: “Jesse directed the OPA to exclude attachments where the correspondent itself was not responsive ... it is also clear that Jesse directed us to exclude SWGTA”—southwest GTA, Oakville documents. “I have the documents and can show them to you.” Are you aware of this memo?

**Ms. Jesse Kulendran:** I became aware of this memo in January.

**Mr. Peter Tabuns:** In January.

**Ms. Jesse Kulendran:** I became aware of the allegations in the fall of last year.

**Mr. Peter Tabuns:** Okay. I’m going to go through some of this, but can you tell me first the subject of the meeting that you had with Kristin Jenkins and Ziyaad Mia?

**Ms. Jesse Kulendran:** Certainly. The objective of the meeting was to review the Ontario Power Authority’s non-privileged materials related to the Oakville gas plant. Those materials were in fact a small subset of all the materials that they had prepared for release. They were roughly, I would say, half the size of a banker’s box. The documents had been flagged for potentially non-relevant information.

So the meeting was, in fact, arranged by our legal services branch, and Ms. Jenkins and Mr. Mia attended. Unfortunately, legal counsel from the ministry was not able to attend, but I attended the meeting. The objective of the meeting was simply to discuss the 15 or 20 documents that had been flagged within that subset as potentially not relevant.

**Mr. Peter Tabuns:** And who was the legal counsel who was supposed to be present?

**Ms. Jesse Kulendran:** It was our director of legal services, Halyna Perun.

**Mr. Peter Tabuns:** Okay.

**Ms. Jesse Kulendran:** And I believe another counsel was to join her as well.

**Mr. Peter Tabuns:** So neither counsel was present. Why was it necessary to have counsel there? Why was it thought necessary to have counsel in the first place?

**Ms. Jesse Kulendran:** I think the benefit of having counsel there was to ensure that any discussion, or any documents that were flagged—if there were any questions raised, they could provide advice on what was required by committee and what was required by the Legislature.

**Mr. Peter Tabuns:** And the 15 or 20 documents—can you tell us the nature of those documents?

**Ms. Jesse Kulendran:** Yes, I can indicate based on my recollection. They were documents, if I recall correctly, that were entirely not relevant to either gas plant. So

in some cases, I believe, there were documents included perhaps inadvertently on, I think, Atikokan coal plant, if I recall correctly; there was a letter and there was a document, I believe, on Lambton—sorry, not Lambton; Thunder Bay. I believe there were some transition materials, but largely they were not related to either of the gas plants.

**Mr. Peter Tabuns:** Did you take any notes in this meeting?

**Ms. Jesse Kulendran:** I did. At the meeting, Ms. Jenkins and Mr. Mia brought a copy of their own documents—again, Oakville non-privileged, so it was just a small box. I worked from the ministry’s copy of the documents. The notes that I had were on the documents themselves.

**Mr. Peter Tabuns:** Can you provide us with a copy of that?

**Ms. Jesse Kulendran:** I wish I could. Unfortunately, those documents were left with the deputy minister’s office, and all of the ministry’s copies of OPA materials were returned to the Ontario Power Authority, I believe by the deputy’s office, at some time in the latter part of October last year.

**Mr. Peter Tabuns:** I would ask, Chair—when we’ve finished with the witness, I’ll have a motion requesting the OPA provide us with those documents.

**The Vice-Chair (Mrs. Laura Albanese):** And we shall deal with that.

**Mr. Peter Tabuns:** Thank you.

Did you instruct the Ontario Power Authority to not disclose certain documents?

**Ms. Jesse Kulendran:** I did not. I did not direct the Ontario Power Authority to exclude documents. I do not have the authority to direct the Ontario Power Authority to exclude documents.

The conversation on August 22 was about sharing observations that had been made through the minister’s office’s review of the documents, but it was not to provide any direction.

Again, at the beginning of the meeting, and throughout the meeting, I reminded Ms. Jenkins and Mr. Mia that while we were discussing potentially not relevant documents, it was their obligation to return and discuss with senior management and their senior legal counsel to make the decisions about what they felt was responsive and relevant.

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**Mr. Peter Tabuns:** The document—or the memo—suggests that you were directing them.

**Ms. Jesse Kulendran:** I understand that and, under oath, I will tell you that I did not direct them to remove any documents. In fact, as we discuss documents: Based on my recollection, when we discussed, for example, the Atikokan letter that was likely inadvertently included, Ms. Jenkins put a Post-it on her copy of the documents. The Post-it had the word “check,” because we did not discuss the removal of those documents at that time.



**Mr. Peter Tabuns:** Can you give any explanation as to why these things would have been said about your behaviour in that meeting?

**Ms. Jesse Kulendran:** Unfortunately, Mr. Tabuns, I can't speculate as to why Ms. Jenkins made these accusations. I can say for certain that there were conversations with Ms. Jenkins in the couple of days following this meeting. A couple of points: Our review was only of the non-privileged documents. The Ontario Power Authority then undertook a review of its privileged documents, and Ms. Jenkins's explanation for this was, in fact, that she—the power authority did not have a chance to review the documents before providing a copy to the ministry. They had outsourced the search and, as a result, did not review it prior to providing it to the ministry.

In fact, in the couple of days following this meeting, Ms. Jenkins did call, and she asked about some banking information that was found in the privileged set of documents that they were undertaking a review of on their own. She asked whether that banking information could be excluded because it was confidential. I indicated to Ms. Jenkins that there were no exemptions from what the committee had requested. In fact, on August 24, Ms. Jenkins sent me an email indicating that the power authority had decided to remove that document and that there were some other issues that legal counsel would speak to legal counsel about or that the CEO would speak to the deputy about. I do have a copy of that email if you would like it.

**Mr. Peter Tabuns:** I would like that, if you could provide it to the committee.

**Ms. Jesse Kulendran:** Sure, absolutely. I have copies.

**Mr. Peter Tabuns:** In this meeting, what was your capacity?

**Ms. Jesse Kulendran:** My capacity was to—from the ministry's perspective, so from the public service perspective—simply share with the Ontario Power Authority some of the observations that had been made on the Oakville non-privileged documents. It was from the minister's office's review of the documents, so, as I indicated, there were 15 or 20 flags. The objective of the meeting was simply to focus on the 15 or 20 flags but, in fact, it was Ms. Jenkins—and I realize that here she says contrary—who asked for a page-by-page review of the documents, because she felt it would be helpful, because they had in fact outsourced the search of their documents and had not had a chance to review at the power authority before providing a copy to the ministry.

**Mr. Peter Tabuns:** And you say you were observing observations on the non-privileged material. What sort of observations?

**Ms. Jesse Kulendran:** From my recollection, it was largely about relevance. As I said, again, there were Post-its, so 15 or 20 Post-its on certain documents in that stack. The notes made reference to the relevance of a certain document. I vividly remember an Atikokan letter, I vividly remember a document on Thunder Bay, and I believe there was some transition material that was attached to, I think, an email from Ms. Jenkins that also

did not relate to either of the gas plants; that's from my recollection.

**Mr. Peter Tabuns:** Okay. So when you would contact Kristin Jenkins in the lead-up to this meeting, who would you tell her you were calling on behalf of?

**Ms. Jesse Kulendran:** I actually did not contact Ms. Jenkins, nor did I arrange the meeting. The meeting was arranged by our legal services branch calling OPA's legal.

**Mr. Peter Tabuns:** Okay. How would you generally characterize your meetings with OPA staff?

**Ms. Jesse Kulendran:** That meeting specifically or other meetings?

**Mr. Peter Tabuns:** That meeting specifically, and then others.

**Ms. Jesse Kulendran:** That meeting was productive. It was very amicable. At no point during that conversation did Mr. Mia or Ms. Jenkins raise any concerns regarding some of the discussion that happened. It was a productive meeting. It was roughly two hours.

**Mr. Peter Tabuns:** Did you have other meetings with them on documents?

**Ms. Jesse Kulendran:** No, that was the only meeting that I had with the OPA.

**Mr. Peter Tabuns:** Okay.

**Ms. Jesse Kulendran:** There were phone calls, Mr. Tabuns, in the couple of days following.

**Mr. Peter Tabuns:** And those were just a follow-up for a discussion of those particular documents, or were there other matters discussed?

**Ms. Jesse Kulendran:** As I mentioned, Ms. Jenkins asked that question around banking information that they had discovered in their privileged material. She had indicated to me and kept me abreast of what the OPA was doing in terms of them undertaking their own review of the other materials, which was the larger portion, which was the privileged materials.

**Mr. Peter Tabuns:** Were you involved in the production of documents from the ministry and from the minister's office?

**Ms. Jesse Kulendran:** Yes, I was assisting in the coordination of the search back in May.

**Mr. Peter Tabuns:** If you were assisting in the coordination, you were part of a larger team?

**Ms. Jesse Kulendran:** Yes, I believe that is how it could be characterized. I assisted in sending out the request for the search. I did not collect the materials physically, so I also did a search myself.

**Mr. Peter Tabuns:** And who was on this team that was pulling together the documents?

**Ms. Jesse Kulendran:** The documents were searched by individuals in the appropriate divisions that were on this file. Our FOI coordinator assisted in gathering all the information together.

**Mr. Peter Tabuns:** Can you tell us who that FOI coordinator is?

**Ms. Jesse Kulendran:** Sure. Alma Beard.

**Mr. Peter Tabuns:** Alma Beard?

**Ms. Jesse Kulendran:** Yes. She was providing assistance and gathering everyone's information. There were a couple of questions that she had had—whether or not certain documents were considered privileged or not privileged. Legal services branch from our ministry did provide assistance in clarifying some of that for her. So, yes, it was a discussion with legal.

**Mr. Peter Tabuns:** Who ran this overall?

**Ms. Jesse Kulendran:** I'm not sure. In terms of—

**Mr. Peter Tabuns:** Who gave you your instructions?

**Ms. Jesse Kulendran:** My instructions came from discussions with the deputy minister.

**Mr. Peter Tabuns:** And that was?

**Ms. Jesse Kulendran:** Serge Imbrogno, and the legal director, which was Halyna Perun, as we discussed.

**Mr. Peter Tabuns:** Did they give you a set of written instructions on how to proceed in this matter?

**Ms. Jesse Kulendran:** Together, we drafted an email that required public servants in the ministry to search their records, and we again sent an email later, clarifying what the committee was asking for—for the first search I'm speaking of—and again providing the parameters of what the committee had asked for.

**Mr. Peter Tabuns:** And would you have access to those emails in which you sent out instructions to staff?

**Ms. Jesse Kulendran:** Yes; this was for the first search.

**Mr. Peter Tabuns:** Would you commit to providing us with copies of that?

**Ms. Jesse Kulendran:** Absolutely.

**Mr. Peter Tabuns:** Noted, Madam Chair?

**The Vice-Chair (Mrs. Laura Albanese):** Noted. Duly noted.

**Mr. Peter Tabuns:** Was there an overall plan for production of documents?

**Ms. Jesse Kulendran:** I'm sorry—in terms of the strategy?

**Mr. Peter Tabuns:** My apologies. Yes, did you have a step-by-step plan for going through the Ministry of Energy, the minister's office, to get those documents?

**Ms. Jesse Kulendran:** I worked on the Ministry of Energy's public services documents. We were informed by the minister's office that they did not have responsive records that—

**Mr. Peter Tabuns:** Sorry, the minister said they had—

**Ms. Jesse Kulendran:** Not the minister; the minister's office indicated that they did not have responsive records.

**Mr. Peter Tabuns:** None at all?

**Ms. Jesse Kulendran:** That is my understanding, yes.

**Mr. Peter Tabuns:** And that was communicated to you in writing?

**Ms. Jesse Kulendran:** I do not believe it was, no.

**Mr. Peter Tabuns:** Do you know who communicated that to you?

**Ms. Jesse Kulendran:** I do, yes. It was Ryan Dunn.  
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**Mr. Peter Tabuns:** Ryan? R-Y-A-N?

**Ms. Jesse Kulendran:** Yes.

**Mr. Peter Tabuns:** So, going back, the overall plan for production of documents—I know you sent out a memo to staff telling them, "Please assemble these documents." Between you and Serge Imbrogno and Halyna Perun, did you have a plan for getting documents?

**Ms. Jesse Kulendran:** I don't believe that I would be in the best position to provide that answer. I think that would be better directed to the deputy. I did assist in the search and I assisted in supporting the deputy's office and the minister's office, but I did not work on the strategy for the releasing of the documents.

**Mr. Peter Tabuns:** So you weren't provided with a copy and you weren't aware of it; is that correct?

**Ms. Jesse Kulendran:** Did I keep a copy of the ministry's documents?

**Mr. Peter Tabuns:** No. Were you given a copy of the plan, the strategy, for assembly of documents?

**Ms. Jesse Kulendran:** No, and I don't believe there was a documented strategy.

**Mr. Peter Tabuns:** Okay. Was any consultant hired to help with the document search and production at the Ministry of Energy?

**Ms. Jesse Kulendran:** During my limited involvement, no, I do not believe the consultant—no, we did not hire a consultant.

**Mr. Peter Tabuns:** Okay, so it was all in-house.

**Ms. Jesse Kulendran:** It was in-house.

**Mr. Peter Tabuns:** What was your role at the Ministry of Energy when this search was taking place?

**Ms. Jesse Kulendran:** As I mentioned in my opening, I was back supporting the deputy's office in May because the ministry had been called to the Standing Committee on Estimates with, I think, eight days' notice. I was there providing support for the preparation for the minister's, the deputy minister's and assistant deputy minister's appearance at committee. That involved all the briefing materials, all the follow-ups from committee etc. That was my involvement. I was there again until mid-June. So, I was there as the committee motion was introduced and the debate took place. But, in June, I did take on my current position.

**Mr. Peter Tabuns:** And that current position is?

**Ms. Jesse Kulendran:** Acting manager for conservation at the Ministry of Energy.

**Mr. Peter Tabuns:** Okay, and even though you'd been put back into the public service as this acting manager, you were drawn back into the document aggregation process?

**Ms. Jesse Kulendran:** But that was as a public servant as well.

**Mr. Peter Tabuns:** No, no, I understand the distinction. I'm just trying to follow the sequence.

**Ms. Jesse Kulendran:** Right.

**Mr. Peter Tabuns:** So, you didn't go back into the minister's office, you didn't go into any political position, but you were taken and you were seconded to document search. Is there a reason you were seconded for document search?



**Ms. Jesse Kulendran:** In August? Is this what you're speaking of?

**Mr. Peter Tabuns:** Yes.

**Ms. Jesse Kulendran:** I was asked to come back in August to assist because I had some of the knowledge of the file at that time. So it was for, I guess, carry-over. I was asked to help because I knew about the parameters of the motion and I knew about the document production. I was there for roughly a week.

**Mr. Peter Tabuns:** Roughly a week. Which political staffer in the minister's office did you work with in document production, if you did at any point?

**Ms. Jesse Kulendran:** It was Ryan Dunn.

**Mr. Peter Tabuns:** Ryan Dunn. What was his status or his position within the minister's office?

**Ms. Jesse Kulendran:** I do not know for certain but I believe at that time he was policy adviser.

**Mr. Peter Tabuns:** Okay. Did you have any involvement with the Premier's office in the course of producing these documents?

**Ms. Jesse Kulendran:** I did not.

**The Vice-Chair (Mrs. Laura Albanese):** Thank you, Mr. Tabuns. We'll have to wait for the second round.

**Mr. Peter Tabuns:** I'll come back. Thank you, Chair.

**The Vice-Chair (Mrs. Laura Albanese):** I shall pass it over to the government side. Mr. Delaney?

**Mr. Bob Delaney:** Good morning, Jesse. Thanks for coming to the committee today.

**Ms. Jesse Kulendran:** Good morning.

**Mr. Bob Delaney:** I understand you moved back and forth within the Ministry of Energy. So, just to clarify it for myself, I'd like to just quickly recap your various roles. You worked as a political staff member to former minister Gerry Phillips, right?

**Ms. Jesse Kulendran:** That's correct.

**Mr. Bob Delaney:** Do you remember the dates?

**Ms. Jesse Kulendran:** Yes, it was from August 2006 to December 2008, and when Minister Phillips resumed an interim role as the Minister of Energy and Infrastructure in December 2009, I supported the minister's office for the three months.

**Mr. Bob Delaney:** Okay. So, for the majority of 2008 and 2009, you were in the civil service within the Ministry of Energy?

**Ms. Jesse Kulendran:** Correct.

**Mr. Bob Delaney:** Okay. All right.

**Ms. Jesse Kulendran:** And then, following February 2010, I was again in the public service.

**Mr. Bob Delaney:** Okay, and since 2010, you've remained in the civil service?

**Ms. Jesse Kulendran:** I have.

**Mr. Bob Delaney:** Okay. So, just to clarify the timing: You've been working on the civil service side for just a little more than two years prior to Minister Bentley's appearance at estimates committee?

**Ms. Jesse Kulendran:** Correct.

**Mr. Bob Delaney:** Okay. So, at the time of the estimates committee hearings—this would be May 2012, last year—

**Ms. Jesse Kulendran:** That's right.

**Mr. Bob Delaney:** —you were working in the deputy minister's office.

**Ms. Jesse Kulendran:** In May 2012, I was actually in the renewables and energy efficiency division. I was asked to return to the deputy minister's office to assist with the ministry's preparation for estimates.

**Mr. Bob Delaney:** All right. Okay. In other words, it's not uncommon for staff to be called into the deputy minister's office to work on special projects when that type of special project may be labour-intensive or require a lot of attention?

**Ms. Jesse Kulendran:** I don't know if it's common, but that is my home position, so it was quite fair for me to be called back to assist.

**Mr. Bob Delaney:** Okay. The secretary of cabinet was here to offer some testimony a couple of weeks ago, and he spoke to the scope of the production motion passed by the estimates committee in May 2012. He described some of the difficulties that the motion presented in terms of compliance. Could you just briefly describe for us the amount of work and the effort that went into pulling together a response to the committee's request, and perhaps what your role in that process was?

**Ms. Jesse Kulendran:** Certainly. For a ministry that had never done this type of work before, it was quite a new process for us. Throughout the process, I know that we acted in good faith, trying to respond to the request of the committee. It was labour-intensive—not personally, but for the whole ministry—because it was about going back a couple of years and looking for documents that one might have. In pulling all of that together, it is understandable that there may have been some items that were missed, and those were caught in the second search.

**Mr. Bob Delaney:** Okay. All right. In your experience working for the Ministry of Energy, have you ever seen such a large request for documents in such a short period of time?

**Ms. Jesse Kulendran:** I've never actually seen such a search for documents in my limited political career—or my public service career.

**Mr. Bob Delaney:** Okay. What sort of challenges would either you or the ministry face in conducting this type of a search?

**Ms. Jesse Kulendran:** I can't truly speak to the entire ministry's challenges.

**Mr. Bob Delaney:** How about you—

**Ms. Jesse Kulendran:** I'm not in the best position to do so. But it was a learning experience, certainly, in terms of the scope of a search like that and the amount of resources that it required.

**Mr. Bob Delaney:** Okay. The committee has also heard from a number of witnesses in the OPA and the Ontario public service that there were significant risks in disclosing commercially sensitive documents before negotiations with the two companies had been resolved. Can you shed any light on that?

**Ms. Jesse Kulendran:** Yes. I had heard of the discussions about the risk to litigation etc., and the risk in dis-



closing privileged materials. In fact, I believe that that was the content of the minister's letter to committee in May 2012. But to truly assess the risk and speak to that risk, I would have to refer the question to the legal services branch.

**Mr. Bob Delaney:** Okay. So, despite all of these challenges, in your opinion, was the document search conducted in good faith?

**Ms. Jesse Kulendran:** It was absolutely conducted in good faith.

**Mr. Bob Delaney:** You're aware that there was more than one document release to respond to the committee's request. As the volume of documents came together. If there were errors and omissions, what did you learn about the errors and omissions, and how did you go about, in subsequent passes, making sure that you'd rectified them?

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**Ms. Jesse Kulendran:** I don't think I'm in the best position to answer that question, simply because I was there for limited periods of time throughout the search. I think it became aware that we had to search the records of employees who had moved to different positions or had perhaps departed the public service. Those areas were then highlighted and, I believe, addressed in the second search. But again, I cannot speak to that, because I wasn't there for the continuous period of time.

**Mr. Bob Delaney:** That's fine. Mr. Tabuns talked to you a little bit about the meeting with the OPA officials on August 22. Just to recap, who was at that meeting?

**Ms. Jesse Kulendran:** That was Mr. Mia and Ms. Jenkins.

**Mr. Bob Delaney:** Did any of those individuals actually report to you?

**Ms. Jesse Kulendran:** Neither of those individuals reported to me, in fact.

**Mr. Bob Delaney:** And by extension, then, you didn't have the authority to either direct them or tell them what to do?

**Ms. Jesse Kulendran:** No. The Ontario Power Authority was responsible for making decisions and complying with the committee's motion. The meeting was not about providing direction. It was about providing observations on the power authority's documents. I repeatedly indicated to both Mr. Mia and Ms. Jenkins that they had a responsibility to have that discussion with their senior management and with their legal counsel on what was and was not responsive to the committee's motion.

**Mr. Bob Delaney:** In other words, you didn't direct the OPA to exclude anything.

**Ms. Jesse Kulendran:** I did not direct the OPA to exclude any documents.

**Mr. Bob Delaney:** Okay. In his testimony, Peter Wallace shared with the committee that he had directed legal counsel in the Ministry of the Attorney General to investigate the claim made by Kristin Jenkins at the OPA that you had provided—and I'm going to use their word—"inappropriate" direction regarding the document search.

I understand that legal counsel conducted a series of interviews with you and with the other individuals who were involved. True?

**Ms. Jesse Kulendran:** Yes. I'm not sure about whether there were a series of interviews with others, but I do know that I was interviewed twice by the Ministry of the Attorney General.

**Mr. Bob Delaney:** Mr. Wallace testified, and I'm going to use his words: "Counsel returned to me with a verbal report indicating that they had not been able to find any concrete evidence to substantiate the allegation, that the witness, the individual involved, appeared to be truthful, that she appeared not to have, in her own mind, offered specific and highly inappropriate direction to the power authority."

Do you stand by the comments you made during that investigation, that you didn't provide inappropriate direction to the OPA?

**Ms. Jesse Kulendran:** I did not provide inappropriate direction to the OPA. Again, I say that I did not have the authority to direct the OPA.

**Mr. Bob Delaney:** Did you discuss the scope of the motion and what the Ministry of Energy considered to be responsive in the context of the search?

**Ms. Jesse Kulendran:** We did discuss the scope of the motion and advice that we had received on what was responsive, yes.

**Mr. Bob Delaney:** Right. Did you provide any suggestions in terms of additional search terms that the OPA may have missed?

**Ms. Jesse Kulendran:** In fact, actually, I did. During the review of the documents, the Oakville non-privileged materials, I noticed that they had bundled it by employees, so there were specific bundles for employees whose documents had been searched. The title page on that bundle, I believe, was "Southwest GTA," and then the name of the employee.

In reviewing the documents, it became apparent that it seemed that the firm that they had hired had searched the term "SWGTA," and as a result, it captured documents related to issues in the area but not related to the gas plant. I indicated to Ms. Jenkins that perhaps they may have missed the terms "Oakville" and "Oakville generating station."

It is my understanding that the memo that I was provided, in fact, had an attachment of Q&As at some point, and that too indicated that the Ontario Power Authority missed those terms in their first search.

**Mr. Bob Delaney:** Okay. What was the OPA's reaction after the meeting?

**Ms. Jesse Kulendran:** After the meeting, Ms. Jenkins did call from time to time. She indicated that the power authority was going to undertake a review of all of their documents, because that had not been done prior to that meeting, and that they were going to review for non-responsive material.

**Mr. Bob Delaney:** Okay. Do you know if that review took place?



**Ms. Jesse Kulendran:** My understanding is that it did; I don't know for certain.

**Mr. Bob Delaney:** Did the OPA agree with you in your recommendation?

**Ms. Jesse Kulendran:** It is my understanding that they did. In fact, I have an email from Ms. Jenkins on September 20. This was significantly after that meeting. A line of it, again, speaks to it. So if I could ask for that to be shared as well.

**Mr. Bob Delaney:** What you're describing then is an exchange between both the OPA and the ministry, so it sounded like you were comparing notes and discussing a proposal. Would it be fair to say it was not a one-sided discussion?

**Ms. Jesse Kulendran:** It was not a one-sided discussion. As I point to the email that I just shared, this was an email to another colleague at the ministry summarizing the copies of documents that had been shared with the ministry. It indicated, "After this, OPA and ministry staff met to discuss how the documents were screened. It was agreed that some adjustments needed to be made. OPA made these adjustments...."

So it is the OPA that made the adjustments. It was the OPA in this case—Ms. Jenkins's email indicates that the conversation we had and the observations that were shared in that meeting were agreed upon by the OPA.

**Mr. Bob Delaney:** So ultimately it was the OPA that was in charge of the final documents that were released.

**Ms. Jesse Kulendran:** Absolutely.

**Mr. Bob Delaney:** Okay. As a ministry staff member, you would have had discussions with the OPA on the motion and on the search process at the meeting—no, I've covered that.

Following the meeting, though, did you get a call from any superior regarding what had transpired at the meeting?

**Ms. Jesse Kulendran:** No, I did not. I kept the deputy and our legal director apprised of what had happened at that meeting.

**Mr. Bob Delaney:** All right. Was there any complaint or comment from the OPA that you had done anything that they either weren't pleased with or that might have been inappropriate?

**Ms. Jesse Kulendran:** It was not until October, I understand, that an allegation was made that they felt that there had been inappropriate direction.

**Mr. Bob Delaney:** I guess it's our turn to circulate a document here. The Clerk is going to hand you a questions-and-answers document that was prepared by the Ontario Power Authority on October 1. In fact, this particular document was used by Mr. Leone during his January 30 news conference where he made some allegations about your involvement in the OPA's document search. I'll wait until you've had a chance to look at it.

By the way, have you had a chance to see that one before?

**Ms. Jesse Kulendran:** Yes, I believe I saw this because I believe this was released with the memo on January 30.

**Mr. Bob Delaney:** Question 2 at the bottom of page 1 asks, "Did the government ask you to leave out these documents?" And the answer is, "No." On page 2, it asks, "What was the direction provided by the government?" And the answer is, "The documents needed to be correspondence from September 1, 2010, to December 31, 2011, that referenced the cancellation of the Mississauga and Oakville power plants."

So what this questions-and-answers document written by the OPA is saying is that the government did not tell them to withhold documents, and the direction the government gave to the OPA as they conducted their search was to ensure the documents were responsive to the estimates committee motion. Would that be an accurate description of what happened?

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**Ms. Jesse Kulendran:** I can speak to my conversations with the Ontario Power Authority, and I can confirm that that would be accurate to my conversations with the power authority.

**Mr. Bob Delaney:** There were some allegations made about your conduct. How have those affected you personally?

**Ms. Jesse Kulendran:** It's unfortunate.

**Mr. Bob Delaney:** Okay. In a news conference here at Queen's Park earlier this year, Jim Hinds was asked by the press gallery if the additional documents that were turned over by the OPA were the result of a—and I'll use the word used at the time—cover-up. He said no. He said, "We messed up some search terms." That's all. From your experience in having participated in the exercise, would you agree with that assessment?

**Ms. Jesse Kulendran:** I would agree. In fact, Ms. Jenkins, in that meeting on August 22, had indicated that they had not searched the records of an employee who had departed the Ontario Power Authority. That is consistent with my understanding, that they did miss search terms and searching an employee who had departed.

**Mr. Bob Delaney:** You've been painting a picture here where the OPA and the ministry are not normally asked for searches of this scope and depth. You've described how everyone did their best to try to find the responsive documents and that, as you learned that there were documents that you might have looked for, you went back and you found them. Right?

**Ms. Jesse Kulendran:** Again, I can't speak to the entire search process, but is consistent with the ministry's approach.

**Mr. Bob Delaney:** Okay. You did a good job with Mr. Tabuns in clarifying some of the redactions. I'd just like to make sure that we didn't miss anything here.

I understand some documents were redacted by both the Ontario Power Authority and the ministry. Obviously, you'll only be speaking on behalf of the ministry and during the time that you were there. Who would be responsible in the ministry for identifying responsive and non-responsive information when it came to the document disclosure?



**Ms. Jesse Kulendran:** I'll deal with the two parts of that question separately. The redactions: I assume that you mean the sections of the documents that were blacked out. Is that the redactions?

**Mr. Bob Delaney:** Yes.

**Ms. Jesse Kulendran:** During the time that I was there, I was not involved in redacting any documents. I understand that those decisions were made after my involvement in August.

As for whether or not documents were responsive, as in responsive to the motion that was presented by the committee on estimates, again, legal had an opportunity to screen the documents. As well, our FOI coordinator helpfully assisted for a period of time to review the documents that had been provided to her by employees of the ministry.

**The Vice-Chair (Mrs. Laura Albanese):** About 30 seconds.

**Mr. Bob Delaney:** Okay. Chair, I'll pick up here during the next round.

**The Vice-Chair (Mrs. Laura Albanese):** We'll then turn it over to the PC side. Mr. Fedeli.

**Mr. Victor Fedeli:** Thank you very much. I too want to spend a couple of minutes on your opening comments where you provided clarity, as you called it. You worked as a Liberal staffer in 2005?

**Ms. Jesse Kulendran:** I did.

**Mr. Victor Fedeli:** For who, again?

**Ms. Jesse Kulendran:** I began with Linda Jeffrey, when she was a member of provincial Parliament prior to her becoming a minister. In August 2006, I began working for Minister Phillips.

**Mr. Victor Fedeli:** So you worked as a Liberal legislative staffer in 2005 to 2006, in that area?

**Ms. Jesse Kulendran:** Correct.

**Mr. Victor Fedeli:** And then you moved on as a Liberal political staffer to the Minister—of Energy, was it? I just have “minister” here—for about three years, in 2006?

**Ms. Jesse Kulendran:** Minister Phillips had a number of portfolios during that period of time. I worked for Minister Phillips from the Ministry of Government Services to Ministry of Energy.

**Mr. Victor Fedeli:** I too want to talk about the document that Mr. Tabuns presented. It's also in our docs as document 1, but let's just refer back to the same one that Mr. Tabuns had. I want to go down to the last sentence. You characterize it as, “We've asked her to take out some emails or some correspondence that had to do with Atikokan or Thunder Bay.” You've mentioned that a couple of times, actually. Why would you remove Atikokan or Thunder Bay, just out of curiosity?

**Ms. Jesse Kulendran:** I did not ask her to remove those documents. We flagged documents that were not relevant to the committee's motion on the Oakville and Mississauga gas plants. The letter, I believe, that was included on Atikokan was not responsive and in relation to the motion that the committee had provided the ministry.

**Mr. Victor Fedeli:** Who would have made that decision, considering that Atikokan or Thunder Bay are possible solutions to the dilemma created when Mississauga or Oakville was cancelled? They're listed elsewhere as potential solutions, so who would make that decision to pull those documents out?

**Ms. Jesse Kulendran:** In the end, the Ontario Power Authority would have made that decision. In my recollection of those documents, they were not in relation to being potential sites, etc.; they were in relation to their own service as generation plants.

**Mr. Victor Fedeli:** In the Kristin Jenkins memo to Colin Andersen, she ends the sentence with, “It is also clear that Jesse directed us to exclude” southwest GTA. “I have the documents and can show them to you.” What do you have to say about that sentence?

**Ms. Jesse Kulendran:** I'd like to deal with both parts of that sentence. I did not direct the Ontario Power Authority to exclude any documents. The discussion was about, again, observations that were made on a small subset of their documents. I did not direct the Ontario Power Authority to exclude documents with “southwest GTA”—the acronym. In fact, we had discussed the fact that it seemed that the Ontario Power Authority had searched for “southwest GTA” instead of other words like “Oakville generating station” and “Oakville.”

I understand that to be consistent with the Q&As that were distributed with this memo that Mr. Delaney provided: that the Ontario Power Authority had in fact missed searching those search terms. In searching for “southwest GTA,” it seemed that documents had been included about other issues in the region, because the Ontario Power Authority deals with a variety of planning issues as well as conservation, etc. That was my observation.

**Mr. Victor Fedeli:** So—

**Ms. Jesse Kulendran:** As for the second part—sorry—about, “I have documents I can show you”: I understand that Ms. Jenkins is likely speaking to the documents that she worked from during that meeting—the Post-it Notes that she would have added to her set of documents. I was not responsible for what she wrote on those documents or the Post-its that she added, and I do not know if those have been altered since.

**Mr. Victor Fedeli:** So let's be clear. She says that, in her words, “Ministry staff now say that they did not instruct OPA staff to exclude documents.” That's what you're suggesting as well?

**Ms. Jesse Kulendran:** I don't know who she's referring to in that line, because I did not discuss that with her after.

**Mr. Victor Fedeli:** But that is what you contend as well: that ministry staff now say they did not instruct OPA staff to exclude attachments, etc.?

**Ms. Jesse Kulendran:** I absolutely support the fact that I did not direct the OPA to take any action—

**Mr. Victor Fedeli:** And you did not direct them to exclude “southwest GTA,” as she claims in this letter?



**Ms. Jesse Kulendran:** I did not direct the Ontario Power Authority, under any circumstance, to exclude documents. That discussion was about sharing observations; it was not about making decisions for the Ontario Power Authority.

**Mr. Victor Fedeli:** It says here, “It is also clear that Jesse directed us to exclude” southwest GTA. You say that that is not accurate.

**Ms. Jesse Kulendran:** That is not accurate.

**Mr. Victor Fedeli:** Okay. And she says she has the documents and can show them to us, which I presume we’ll get around to doing with her.

Let’s just go to this document that you handed out on September 20, 2012. It says here—first paragraph, “Hi Michael.” The last sentence says, “The OPA made these adjustments”—so they’re talking about how they found a new set of documents, that kind of thing. “The OPA made these adjustments and sent new, revised packages.” So the packages they’re saying they have are Southwest GTA Non-Privileged, Southwest GTA Privileged and Greenfield Site Privileged.

So, “made these adjustments and sent new revised packages.” Who would the packages be sent to?

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**Ms. Jesse Kulendran:** It was sent to the ministry on August 24.

**Mr. Victor Fedeli:** Okay. You said, just when you testified to Mr. Delaney, that the OPA was in charge of final documents that were released.

**Ms. Jesse Kulendran:** Correct.

**Mr. Victor Fedeli:** So you weren’t suggesting they were in charge of the final documents that were released to the committee. They were in charge of the final documents that were released to the ministry.

**Ms. Jesse Kulendran:** No, these were—

**Mr. Victor Fedeli:** Well, you just said that a moment ago when I asked you—

**Ms. Jesse Kulendran:** I don’t believe so. In fact, copies—

**Mr. Victor Fedeli:** I asked you, “OPA made these adjustments and sent new, revised packages.” I asked you, “To whom?” and you said, “To the ministry.”

**Ms. Jesse Kulendran:** They were copies of the documents that the OPA had. The OPA was responsible and maintained a master copy of all of their documents. Copies were provided to the ministry.

**Mr. Victor Fedeli:** I asked you a minute ago who the OPA made these adjustments and sent new, revised packages to, and you told us, “The ministry.”

**Ms. Jesse Kulendran:** That is correct.

**Mr. Victor Fedeli:** Okay.

**Ms. Jesse Kulendran:** They sent copies of revised packages to the minister—

**Mr. Victor Fedeli:** But that’s not what you said. I asked you who—the OPA made these adjustments and sent the revised package. You said “the ministry”—not “the committee”; “the ministry.” You didn’t say “the ministry as well”: “Oh, they were copies that went to the ministry, that went to the committee.” Are you saying the

OPA directly supplied the committee with the documents?

**Ms. Jesse Kulendran:** When the documents were disclosed to the committee, my understanding is the Ontario Power Authority directly disclosed them to the committee on August—

**Mr. Victor Fedeli:** Not to the ministry.

**Ms. Jesse Kulendran:** On August 24—

**The Vice-Chair (Mrs. Laura Albanese):** Mr. Fedeli, the witness is under oath—

**Mr. Victor Fedeli:** I understand.

**The Vice-Chair (Mrs. Laura Albanese):** —and we should allow her to answer fully your questions.

**Mr. Victor Fedeli:** I appreciate it. I’ll take care of my questioning, thank you.

**Ms. Jesse Kulendran:** Sorry. On August 24, copies were provided to the ministry of the following documents.

**Mr. Victor Fedeli:** So you’re suggesting, then, that not only did the OPA send the ministry the documents; they also sent the committee directly?

**Ms. Jesse Kulendran:** I don’t remember exactly when the Ontario Power Authority provided committee directly with those documents, but copies of those documents were provided to the ministry on August 24 for the ministry’s review, and that’s all. It was not disclosure at that time.

**Mr. Victor Fedeli:** So down at the end it says, and this is that September 20, “All that to say, the ministry has two sets of unredacted documents for SWGTA and Greenfield South. I am sure ... Jesse Kulendran can let you know where the documents are.”

**Ms. Jesse Kulendran:** I believe it says, “I am sure Halyna or Jesse Kulendran can let you know”—

**Mr. Victor Fedeli:** Yes, so you know where the documents are.

**Ms. Jesse Kulendran:** Those documents were delivered to the ministry on August 24. They were kept in the ministry at that time. This—

**Mr. Victor Fedeli:** Unredacted at that time?

**Ms. Jesse Kulendran:** Correct. As I understand, that’s Ms. Jenkins’s note. This email was September 20. At that point, Mr. Fedeli, I was not in the deputy minister’s office. The documents were delivered to the ministry and they were kept at the ministry as a copy, but I don’t know where they were on September 20.

**Mr. Victor Fedeli:** Where were you on September 20?

**Ms. Jesse Kulendran:** I was in my current position as the acting manager for conservation policy.

**Mr. Victor Fedeli:** Why would they think that “Jesse Kulendran can let you know where the documents are”?

**Ms. Jesse Kulendran:** Because I was there when the documents were delivered on August 24.

**Mr. Victor Fedeli:** Okay. So the ministry at this time has the two sets of unredacted documents?

**Ms. Jesse Kulendran:** Yes. On August 24, the ministry received two copies of unredacted documents.

**Mr. Victor Fedeli:** Okay. What happened to those copies? Do you know?

**Ms. Jesse Kulendran:** I do not know for certain, so I'm not in the best position to answer this, but my understanding is that at some point after the ministry's review, once the documents had been tabled with committee, the copies were in fact returned to the Ontario Power Authority.

**Mr. Victor Fedeli:** Okay. You characterized yourself a couple of times in the discussion as "the OPA decided" or "I didn't do it" or "I had limited involvement" or "my involvement was minimal"—that type of thing. Yet there are literally hundreds of documents with your name on them, many of them originating from you. I would characterize that you had a little bit more involvement than "limited." Some of them, you're actually directing the discussion.

On document 2, from you to the Halyna that you mentioned: "We have a very small circle working on this—you, Rick, Garry and three people from the OPA."

Continuing on document 2, by the looks of it, there are more confidential documents, again issued from you to other people, such as David Lindsay or Rick Jennings, these other types—Halyna. They're from you. You're the point person in all this.

If you look at document 7—again, this is from you. This is a very detailed one. You're in control here of these documents and the content of some of them as well. The middle of it, where you've sent an email to Ryan King and Doug MacCallum and others—this is PC doc 7: "Should we perhaps add one more row to this comparison—what percentage of the time was/is the plant expected to operate (i.e. X% of hrs/year)." That's pretty detailed, to be right in the midst of all of these documents. You're in the middle of all this. You're controlling some of the content that went into some of the documents here on Greenfield versus Oakville. I'm just not sure that your earlier characterization of "limited involvement" or "on the fringes" is accurate.

**Ms. Jesse Kulendran:** I'm happy to respond to that. My characterization, Mr. Fedeli, was related to my involvement in the document search for the period of time that the committee motion was being processed and the ministry was working to produce documents for the committee. So that was my characterization of my involvement in that period of time.

As I did say in my statement, I did work for the deputy minister's office in 2010, and during that role—I'm happy to discuss my responsibilities at that time. At that time, as a policy coordinator in the deputy minister's office, I did coordinate documents, minister's office's request communications material and a number of those things. So, as I said, my involvement in the document search was limited. I did not provide any direction to the power authority. But what these documents represent is a different period of my career and my position in the deputy minister's office in 2010.

**Mr. Victor Fedeli:** So if we look at document PC 5—the third page of the document. This is one of the docu-

ments that we received that has been redacted. On page 3: "Are you moving the gas plant back to Mississauga? Or elsewhere in the GTA?" The answer has been redacted. Do you recall what the answer to that would have been or why it would have been redacted or who did the redaction of that one? Do you have that document there?

**Ms. Jesse Kulendran:** I do have the document. I'm looking at page 3.

**Mr. Victor Fedeli:** So you see the black lines I'm referring to?

**Ms. Jesse Kulendran:** Correct. This is a document from 2010. Unfortunately, I'm sorry; I do not remember the answer for that question 6. I did not redact this document, and I'm not certain as to who did the redactions of documents—

**Mr. Victor Fedeli:** You sent this. This is from Jesse Kulendran to a Maryanna Lewyckyj. There's one of the documents in there. You've obviously sent this on to somebody. Can you undertake to provide the original document from your email?

**Ms. Jesse Kulendran:** Certainly, I can work with the ministry to do that. I believe this document was provided by Carolyn Calwell—at the top of it. So I can undertake to work with the ministry to provide this document.

**Mr. Victor Fedeli:** But you're on it as well. It's in your computer.

**Ms. Jesse Kulendran:** Again, I would have to go and confirm that I still have it, but I'm happy to do that.

**Mr. Victor Fedeli:** Okay. Can we set that up at the end of this session as well, Chair?

1030

**The Vice-Chair (Mrs. Laura Albanese):** Yes, we can.

**Mr. Victor Fedeli:** On PC document 6, it talks about Project Oak. What's Project Oak? That's a new word for us today.

**Ms. Jesse Kulendran:** Sorry—

**Mr. Victor Fedeli:** PC document 6.

**Ms. Jesse Kulendran:** Are we looking at—oh, okay, the title of the email. I believe that was a reference to Oakville as well.

**Mr. Victor Fedeli:** You're in this document as well.

**Ms. Jesse Kulendran:** Yes.

**Mr. Victor Fedeli:** "How are we doing with the 'Project Oak' piece?"

**Ms. Jesse Kulendran:** This was during my tenure in the deputy minister's office in 2010.

**Mr. Victor Fedeli:** This document talks about the \$200 million that's going to be needed to be incurred by Hydro One, including costs in Oakville, to connect the transmission line. Is that not correct?

**Ms. Jesse Kulendran:** If you're referring—

**Mr. Victor Fedeli:** Page 2 of that one.

**Ms. Jesse Kulendran:** Page 2 of Mr. Jennings's email? Yes.

**Mr. Victor Fedeli:** PC document 6, Project Oak. If you go to the next page, it says: "How are we doing with the 'Project Oak' piece?" Then it talks about the fact—



there's a table comparing options etc. Do you see that? Do you have that one there?

**Ms. Jesse Kulendran:** I do.

**Mr. Victor Fedeli:** The second sentence: "In summary, if the Oakville plant is not built, transmission costs of \$200 million will need to be incurred by Hydro One," etc. Is that your understanding as well?

**Ms. Jesse Kulendran:** I was not the policy person on this file. This email is from Mr. Jennings.

**Mr. Victor Fedeli:** Why are you included in it?

**Ms. Jesse Kulendran:** I was copied because of my responsibilities in the deputy minister's office. My responsibility was a policy coordinator. I wasn't providing advice or information.

**Mr. Victor Fedeli:** If you go to—how much time do I have, Chair?

**The Vice-Chair (Mrs. Laura Albanese):** You have less than two minutes.

**Mr. Victor Fedeli:** Okay. You do understand why we're here; right?

**Ms. Jesse Kulendran:** Absolutely.

**Mr. Victor Fedeli:** The Speaker has found a prima facie case of a breach of privilege. We're here to determine whether there's a contempt of Parliament. Basically, we're here to find out two things: how much this is going to cost the taxpayer and who ordered the cover-up. We're trying to find out who's responsible. To be quite frank, you're in a lot of these documents and we're trying to determine your role. You characterize it as minor, yet you're directing some of these things. We're very concerned that—

**Ms. Jesse Kulendran:** I'm happy to speak to my role, Mr. Fedeli, in the deputy minister's office in 2010.

**Mr. Victor Fedeli:** I haven't asked a question yet, but I'm going to get around to it in a second.

**Ms. Jesse Kulendran:** Sorry.

**Mr. Victor Fedeli:** It appears that you're in the centre of a lot of these things, especially the Kristin Jenkins original email where she claims that it's clear that you "directed us to exclude" the southwest GTA. That's still a very concerning document where she claims to have the documents backing that up and can show us those documents. I'll ask you again: How would you characterize Kristin Jenkins's email to you?

**The Vice-Chair (Mrs. Laura Albanese):** You'll have to hold on to that thought and pass it now on to the NDP side. Mr. Tabuns.

**Mr. Peter Tabuns:** Thank you, Chair. Ms. Kulendran, the documents that you were shown on August 22—you have clear recollections of being shown documents relating to Atikokan?

**Ms. Jesse Kulendran:** Correct.

**Mr. Peter Tabuns:** And another related to Thunder Bay.

**Ms. Jesse Kulendran:** I believe so.

**Mr. Peter Tabuns:** You were meeting with two senior members of the Ontario Power Authority. They were talking about whether documents were relevant or irrelevant. I may be wrong, but I would think that they would

have known already if a document like that was irrelevant. Why were they bringing it to your attention?

**Ms. Jesse Kulendran:** They were not bringing it to my attention, Mr. Tabuns. As I had indicated, the Ontario Power Authority had not done a review of these documents, as Ms. Jenkins indicated to me. The documents were reviewed by the ministry, the minister's office, and at that time the ministry was asked to meet with the Ontario Power Authority to share some of the observations that were made. I assume that, had the Ontario Power Authority reviewed the documents themselves before that meeting, they would have also noticed documents that weren't relevant—potentially not relevant.

**Mr. Peter Tabuns:** In the email from October 3, Kristin Jenkins writes, "As you are aware, both Ziyaad and I have been clear that this is in fact what Jesse Kulendran told us to do at the meeting on August 22"—that is, exclude documents, exclude attachments where the cover email didn't mention Oakville or Greenfield South. Why would they lie about this?

**Ms. Jesse Kulendran:** I can't speak to why Ms. Jenkins wrote this memo. I can continue to speak to the fact that I did not direct the Ontario Power Authority. The meeting was about sharing observations that had been made in their documents. It was not about providing any rules or any direction to them to exclude or include anything. In fact, the review of documents presented that most of the documents were relevant. There were 15, 20 documents that had some question marks, and those were discussed with the Ontario Power Authority, but the Ontario Power Authority, as I circulated in that email on September 20, did make its own decisions.

**Mr. Peter Tabuns:** Well, if they were discussing documents with you and they came across a document that had to do with Atikokan and nothing to do with either Greenfield South or southwest GTA, my assumption is that they didn't need to discuss it with you.

**Ms. Jesse Kulendran:** That would be correct. But again, my understanding, when Ms. Jenkins joined the meeting with me, is that they had not reviewed the material that they had provided to the ministry. So at that time, it was the ministry that had reviewed the material—the minister's office reviewed the material—and we provided a few observations. They probably would have come to that conclusion had they reviewed it, but at that time, they had not.

**Mr. Peter Tabuns:** If I remember correctly, you said that there was about a half banker's box of documents, and there were roughly 15 that had been earmarked. That's your representation of the facts?

**Ms. Jesse Kulendran:** Yes. Those were the Oakville non-privileged documents. It was half the size of a banker's box. I believe the privileged documents were much more. There were about 15 or 20 documents that had been flagged, and that's based on my recollection.

**Mr. Peter Tabuns:** So if there were only 15 or 20 documents, I would have thought that they would have figured it out, if these documents were irrelevant. They didn't need to talk to you.



**Ms. Jesse Kulendran:** Had they undertaken the review, they would have figured it out. And in fact, I think they went back and reviewed their whole set of documents from beginning to end, and probably likely found other documents that may not have been relevant to the motion. I do not know that for certain; we simply reviewed one subset.

**Mr. Peter Tabuns:** Yes, but your testimony is that these documents were already marked. What you've said to us earlier is that there were 15 or 20 documents that had Post-it Notes. Yours is a very different version from what they have to say.

**Ms. Jesse Kulendran:** Correct.

**Mr. Peter Tabuns:** The ones that you remember clearly referred to Atikokan and Thunder Bay.

**Ms. Jesse Kulendran:** Those were two examples of what I remember, yes.

**Mr. Peter Tabuns:** Yes. So if they had already gone through and they had noted that, I expect they would have understood on their own that these were irrelevant.

**Ms. Jesse Kulendran:** Had they reviewed them on their own before that meeting, I expect that they would have understood that they were not relevant.

**Mr. Peter Tabuns:** And since they have fairly senior positions, my sense was that in fact they would have known they were not relevant. So I'm very puzzled as to why they would discuss it with you at all.

**Ms. Jesse Kulendran:** The genesis for the meeting, again, was the fact that the minister's office had reviewed the documents, had indicated that they had noticed there were some non-relevant documents included and had asked the ministry to have this meeting with the OPA. I did not make the call to set up that meeting, but in indicating to the Ontario Power Authority that we noticed some non-responsive documents were included, they came because they had not done a review of their documents at that time. So at that time, they sought our observations. Then my understanding is, Ms. Jenkins and Mr. Mia went back and in fact did undertake a review of the documents.

**Mr. Peter Tabuns:** Kristin Jenkins writes, "After our meeting yesterday, I followed up with Ziyaad, who reminded me that at the August 22 meeting, Jesse requested that we go page by page through OPA's non-privileged Oakville documents. During this page flip, Ziyaad and I put Post-it Notes on the documents based on the direction Jesse was giving us during the meeting." In fact, what she's saying is directly contrary to what you're saying, and—

**Ms. Jesse Kulendran:** Unfortunately, yes.

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**Mr. Peter Tabuns:** Are you saying that she's lying, that she's putting forward a false statement in this email?

**Ms. Jesse Kulendran:** I am not sure why Ms. Jenkins characterized the meeting as she did, but I am saying that I did not provide direction to the OPA.

In fact, it was not myself who asked to go page by page. When we began that meeting, Ms. Jenkins and Mr. Mia sat down, and she indicated to me that the Ontario

Power Authority had outsourced the search to a third party. She indicated to me that they had not reviewed the materials before providing a copy to the ministry. In fact, she asked if we could go page by page, as it would be helpful to her. I had no objective for going page by page; I had 15 or 20 flags that were my responsibility to share with the OPA. That was the end of my responsibility. It was Ms. Jenkins who sought to go page by page.

**Mr. Peter Tabuns:** She writes, "Not only is it apparent from the Post-it Notes that Jesse directed the OPA to exclude attachments where the correspondence itself was not responsive, it's also clear that Jesse directed us to exclude SWGTA." That's a pretty substantial statement.

**Ms. Jesse Kulendran:** I understand that, and I understand that Ms. Jenkins put the Post-it Notes on the documents herself, that those Post-it Notes at that time would have been reflective of the conversation we were having.

Now, I did not direct the OPA. I did not make any blanket rules for the OPA. I do not have the authority to direct the OPA to exclude documents. It is unfortunate that Ms. Jenkins made these allegations. They are inconsistent with the two emails that I provided earlier, which indicated that the Ontario Power Authority made these decisions on their own. In fact, her allegations are also inconsistent with the Ontario Power Authority's Q&As that were provided—I can't remember by whom—dated October 1.

**Mr. Peter Tabuns:** No, I've seen the OPA Q&As. That's going to be substance for another line of questioning and another witness.

This meeting was fairly substantial given the political pressure surrounding it. Why didn't you reschedule the meeting for counsel to be present?

**Ms. Jesse Kulendran:** Absolutely. When I was notified on the morning of the 22nd that counsel was not able to be present at that meeting, I was encouraged by counsel to proceed with the meeting and advise the OPA that, should they require any clarity, any follow-up questions—anything at all—they should, in fact, contact our legal services branch. It was about a time constraint at that time. So I was encouraged to go ahead with the meeting, indicating, of course, that these were the ministry's observations as had been marked by the minister's office and that this was not about providing direction, and should they require any clarity or any follow-up that they should seek advice from our legal services branch.

**Mr. Peter Tabuns:** Can you tell me who prepared you for today's testimony?

**Ms. Jesse Kulendran:** Absolutely. I did have a couple of meetings with the Ministry of the Attorney General—

**Mr. Peter Tabuns:** Who?

**Ms. Jesse Kulendran:** Sorry. It was Chantelle Blom and Walter Myrka—I can't remember his last name; I can clarify. It was about my requirements at committee, my obligation under oath and how to ensure that I was articulating my thoughts—

**Mr. Peter Tabuns:** Anyone from the Premier's office or Cabinet Office?



**Ms. Jesse Kulendran:** No.

**Mr. Peter Tabuns:** Any other staff that you worked with? Anyone from the Liberal Party? Anyone else who prepared you for this?

**Ms. Jesse Kulendran:** I did not get prepared by the Liberal Party. I did not get prepared by fellow staff. I got lots of helpful advice, but no preparation, no.

**The Vice-Chair (Mrs. Laura Albanese):** We will now turn it to the government side.

**Mr. Bob Delaney:** Okay. A few points that I think we just want to clarify and clean up on.

In a letter to the Clerk on October 12, the Deputy Minister of Energy wrote the following: "The only redactions in the September 24 disclosure package and the documents attached to this letter pertain to information unrelated to the cancellation of the Mississauga or Oakville power plants that is unresponsive to the May 16 motion of the committee."

I've heard my colleagues opposite claim repeatedly that responsive information was redacted, yet the deputy himself affirmed that this was not the case.

In your recollection, was material responsive to the request of the Standing Committee on Estimates redacted?

**Ms. Jesse Kulendran:** I was not there at the period of time that any redactions to documents took place.

**Mr. Bob Delaney:** Well, let's try it another way. What would be an example of something that would be non-responsive?

**Ms. Jesse Kulendran:** I imagine if it had to do with another matter that the Ministry of Energy was working on. Perhaps it was a renewables file, etc.

**Mr. Bob Delaney:** Okay. Although you've said this before, who had the final say and the final decision-making authority on something in a document being responsive or non-responsive?

**Ms. Jesse Kulendran:** In the ministry's documents?

**Mr. Bob Delaney:** Yes, in the documents that you were looking at at the time.

**Ms. Jesse Kulendran:** So this is not the Ontario Power Authority's documents; it's about the ministry's.

**Mr. Bob Delaney:** In the ones that you were looking at during the time period in question, who would have had the final say and decision-making authority on something in a document—

**Ms. Jesse Kulendran:** I'm not sure, because I wasn't there for the final period of time. I know for certain that I did not personally make any decisions on documents that were or were not responsive.

**Mr. Bob Delaney:** Okay. Again, just to clarify: I heard Mr. Fedeli directly say that you actually controlled the content of the documents rather than searching for documents that responded to the estimates committee's request. Although you've clarified it before, would you clarify it again?

**Ms. Jesse Kulendran:** I'm sorry. Could you repeat that question? Sorry.

**Mr. Bob Delaney:** Okay. Mr. Fedeli suggested that you actually controlled the content of the documents

rather than searching for documents that responded to the estimates committee's request.

**Ms. Jesse Kulendran:** Correct. During the period in August, I did not directly control any content. In 2010, when I was in the deputy's office and when the decision was made on Oakville, yes, there are records where I was in the deputy minister's office and helping share materials that were being prepared.

**Mr. Bob Delaney:** Okay. And just toward the end of your comments with Mr. Tabuns, you said that you had some helpful advice. What do you mean by "helpful advice"?

**Ms. Jesse Kulendran:** "Stay calm. Speak clearly. Sit up straight. Speak loudly." That's one I always get reminded about.

**Mr. Bob Delaney:** Well, I'd have to say you took that helpful advice.

**Ms. Jesse Kulendran:** Thank you.

**Mr. Bob Delaney:** Chair, I think we're done.

**The Vice-Chair (Mrs. Laura Albanese):** Thank you, Mr. Delaney. We'll now turn again to the PCs. Mr. Leone?

**Mr. Rob Leone:** Thank you. Ms. Kulendran. I want to ask you some questions about your past involvement with the Liberal Party. You stated that you were a staffer in a member's office and a minister's office. Were you ever a member of the Liberal Party?

**Ms. Jesse Kulendran:** During the term of my employment, I believe I did have a membership.

**Mr. Rob Leone:** Have you ever donated to the Liberal Party?

**Ms. Jesse Kulendran:** Prior to my joining the public service, yes, I have.

**Mr. Rob Leone:** And would you characterize that you maintain a close relationship with people in the Liberal Party today?

**Ms. Jesse Kulendran:** I have a number of colleagues who have left the Liberal Party whom I worked with at that time, that I maintain contact with occasionally.

**Mr. Rob Leone:** So only people who have left the Liberal Party, you've maintained contact with? No one who is still part of the government? You don't meet them for—

**Ms. Jesse Kulendran:** For dinner?

**Mr. Rob Leone:** —cocktail hour or dinner?

**Ms. Jesse Kulendran:** I don't recall.

**Mr. Bob Delaney:** Chair, what does this have to do with the subject under discussion?

**Mr. Rob Leone:** I'm allowed to ask these questions. I think this is—

**Mr. Bob Delaney:** You're not allowed to go beyond the scope of the discussion.

**Mr. Rob Leone:** And we are establishing questions, and I think this time is totally out of order.

**Mr. Bob Delaney:** In this case, the witness's personal life is her own life. You can ask her about the documents but not about her personal life.

*Interjections.*

**The Vice-Chair (Mrs. Laura Albanese):** It's within the scope of the motion.

**Mr. John Yakabuski:** Sit down, Bob, and shut the hell up. We're wasting our time.

**The Vice-Chair (Mrs. Laura Albanese):** Let's not be unparliamentary. Let's all be respectful.

**Mr. John Yakabuski:** He plays this game all the time, Chair.

**The Vice-Chair (Mrs. Laura Albanese):** Let's be respectful.

**Mr. Rob Leone:** We are totally within the rights of asking this question.

Jesse, your testimony today, what we do know of it—we know that you are a former Liberal staffer. We know that you attended, as you've mentioned, a meeting that the legal services branch organized yet no person from the legal services branch attended, so essentially you attended alone.

1050

You were, in many ways, selected to be the point person on this file, particularly with respect to the documents and the disclosure of documents. You've suggested that there has been no documented strategy on the release of documents. That's something that you said earlier today. You stated that you chatted with Ryan Dunn—and who is Ryan Dunn again?

**Ms. Jesse Kulendran:** He was a minister's office policy adviser.

**Mr. Rob Leone:** Minister of Energy?

**Ms. Jesse Kulendran:** Yes.

**Mr. Rob Leone:** All right. And you've stated that you've communicated something—you had conversations with him but nothing was put in writing, I believe is what you stated earlier.

**Ms. Jesse Kulendran:** I believe that was in response to whether the minister's office had any records, and yes, that was a verbal discussion. There was no written record of that.

**Mr. Rob Leone:** So there's nothing documented in writing at all.

**Ms. Jesse Kulendran:** In relation to that discussion, correct.

**Mr. Rob Leone:** At all? I mean, period, between you and Ryan Dunn?

**Ms. Jesse Kulendran:** For the course of my employment with the deputy's office?

**Mr. Rob Leone:** With respect to the issue we're dealing with here, with the disclosure of documents.

**Ms. Jesse Kulendran:** I don't know. I know that in relation to the request about whether or not the minister's office had records, I do not have a written record of that.

I did work with Mr. Dunn for the ministry's appearance at estimates committee, so there would be emails from the ministry's preparation for estimates committee at that time.

**Mr. Rob Leone:** Right. Did you know Ryan Dunn prior to this?

**Ms. Jesse Kulendran:** Prior to his employment at the Ministry of Energy? No.

**Mr. Rob Leone:** Prior to your discussion with him with respect to document disclosure.

**Ms. Jesse Kulendran:** I worked with him at the Ministry of Energy, yes. He was in the minister's office for a period of time.

**Mr. Rob Leone:** You've contradicted a written memo—well, obviously, you contradicted—a memo by Kristin Jenkins that we've had a lot of discussion about today. Mr. Tabuns asked if you think Ms. Jenkins is lying, but the fact remains that there's a contradiction between what Ms. Jenkins has written and what your testimony has provided today. We also know that you were under investigation when Secretary Wallace was here. He stated such, and you've confirmed that you are under investigation as well with respect to some of your involvement in the allegations that have been made.

The point that I'm trying to make here—and to address Mr. Delaney's interjections—is the fact that we have someone who's a known Liberal contradicting the written memo by the Ontario Power Authority, the arm's-length body that is supposed to be dealing with this matter. We are, as a committee, set to determine who, in fact, we should believe: Ms. Jenkins, who I'm sure will be testifying to the comments that she has made, or you. If your links to the Liberal Party are as strong as I believe they are, that does affect the currency we effectively place on your testimony today because we're putting your word against, frankly, Ms. Jenkins's. So who are we to believe? Are we to believe Ms. Jenkins or you?

How do you react to what I have just said?

**Ms. Jesse Kulendran:** Certainly, I am currently under oath and testifying before this committee under oath, committing to you to provide the truth about my recollection with the meeting with Ms. Jenkins on August 22.

As to my former ties to the Liberal Party, I was a political staffer for three years. During that time, I was involved in the Liberal Party. Since 2008, I have been a public servant and have maintained the values of the public service. I have acted in good faith, and this is not about my political experience in the past.

**Mr. Rob Leone:** But, again, you were the person selected to be the point person on this document search.

**Ms. Jesse Kulendran:** Again, Mr. Leone, I was there for a period of time, so I do not consider myself the point person on the document search. I helped in May, when the document search began, and again in August as there was preparation for the release of documents. I was there for roughly a week. I understand that the documents were released in September and again in October, and I was not involved in either of those.

**Mr. Rob Leone:** But again, we go back to the written memo from Ms. Jenkins, who states that, "Jesse directed the OPA to exclude detachments where the correspondence itself was not responsive ... it is also clear that Jesse directed us to exclude SWGTA," southwest GTA. So we are now again at a crossroads here with your testimony and with what we have seen here. We are again, I guess, questioning the credibility that you have in terms of your



word being simply against Ms. Jenkins. The fact is that even given your testimony, there's a lot that's put on your shoulders with respect to this.

As Mr. Fedeli was pointing out in his concluding remarks in the last 20-minute session on our round, this is a serious discussion that we're having with respect to contempt of Parliament. We're investigating whether contempt does in fact exist. Anybody could be subject to such a charge. It's not simply the minister; it could be any individual who effectively directed the exclusion of documents or in fact the cover-up of these documents, and you're right at the centre of that.

**Ms. Jesse Kulendran:** Again, I can say that I do not have the authority to direct the OPA. In fact, the two emails that I circulated, dated August 24 and September 20, indicate that the Ontario Power Authority made its own decisions. In fact, the Ontario Power Authority's Q&As also indicate that they made their own decisions. So I did not direct the Ontario Power Authority to exclude any documents, Mr. Leone. We did discuss observations that were made in a small subset of their documents, but that was a joint discussion. In fact, in that meeting, Ms. Jenkins sought to take out a document that was potentially relevant and of a personal concern to her related to an HR matter. Now, we never actually saw that document so it was not a point of discussion, but I can say that I acted in good faith in that meeting and I did not direct the Ontario Power Authority to remove any documents.

**Mr. Rob Leone:** At the end of the day, again, you're at the centre of this conundrum—

**The Vice-Chair (Mrs. Laura Albanese):** You have about a minute.

**Mr. Rob Leone:** —and we are again tasked with doing this.

You attended a meeting that was, again, organized by the legal services branch without someone—a lawyer, essentially—with you. Do you think that that was a mistake?

**Ms. Jesse Kulendran:** In hindsight, certainly, it would have been better for a legal counsel to have been there in light of the false allegations that have been made against me, absolutely. However, I was asked to proceed with that meeting.

**Mr. Rob Leone:** And at the end of the day you did proceed with that meeting, and an investigation was commenced, as secretary Wallace has suggested. He also stated in his testimony that nothing conclusive was found either to disprove or prove the allegation. So, again, this is about your word against the word of the OPA. I guess I don't have enough time to ask a question with respect to that, but this is the conundrum that I think you're in.

**Ms. Jesse Kulendran:** I understand.

**The Vice-Chair (Mrs. Laura Albanese):** Time is up. Ms. Kulendran—

**Mr. John Yakabuski:** Chair, I would like to raise a point of order.

**The Vice-Chair (Mrs. Laura Albanese):** I would just like to officially dismiss our witness. Thank you for appearing before the committee today. Thank you for your time.

**Ms. Jesse Kulendran:** Thank you, Chair.

**The Vice-Chair (Mrs. Laura Albanese):** Yes, Mr. Yakabuski?

**Mr. John Yakabuski:** Thank you very much. Chair, Mr. Delaney seems to be bent on repeatedly interrupting the course of questioning on the part of us, the official opposition, when he seems to think—he must think he's a lawyer—that he's defending the witness before the committee. I have yet to see one occasion where his interjections have been ruled in order. I would expect, Madam Chair, that if he continues to do this, that any time being used—I think it is reasonable to ask that that be added to the time of the party that's being interrupted because it's just a little game that he continues to play, acting like he has some legal knowledge about what we can or cannot do, which every time he's wrong. Every time, he's ruled that he's not in order.

**Mr. Bob Delaney:** Chair?

**The Vice-Chair (Mrs. Laura Albanese):** One at a time. Mr. Yakabuski, you mentioned that it was repeatedly; I do not find that. It was only once that we were called on that today.

**Mr. John Yakabuski:** Once today.

**The Vice-Chair (Mrs. Laura Albanese):** And I can also say that you were unparliamentary beforehand, so I would—

**Mr. John Yakabuski:** Fine, Chair. I apologize for that. That's got nothing to do with my request about muzzling Mr. Delaney.

**The Vice-Chair (Mrs. Laura Albanese):** It's not a point of order, and I would like to move forward.

*Interjection.*

**The Vice-Chair (Mrs. Laura Albanese):** Yes, that's exactly where I was going. The Clerk was saying, "Encourage all members to be honourable." That's what I would like to do and then move forward.

First of all, we need to deal with a motion that was put forward by Mr. Leone. It was moved on March 21. It had been deferred, and Mr. Leone would like to know how we'd like to deal with that.

**Mr. Rob Leone:** Madam Chair, I'd like to withdraw that motion until we've adjusted it for a proper re-presentation.

**The Vice-Chair (Mrs. Laura Albanese):** Thank you. That's duly noted.

We'll now move to a motion by Mr. Tabuns. I believe we all have a copy of that. This is before the floor.

**Mr. Peter Tabuns:** If I can move it.

**The Vice-Chair (Mrs. Laura Albanese):** Yes. You have to move it.

**Mr. Peter Tabuns:** I move that the Ontario Power Authority produce the documents annotated by Jesse Kulendran in her meeting of August 22, 2012, with Kristin Jenkins and Ziyaad Mia.

If you will remember, Chair, I asked Ms. Kulendran for a copy of her notes from that meeting. She said that she had inscribed notes on documents that were no longer in her possession, if I remember her comments correctly. Those documents had been turned over to the Ontario Power Authority, and they are the appropriate body to produce them to us.

**The Vice-Chair (Mrs. Laura Albanese):** Any debate? So we'll then proceed—

**Mr. Bob Delaney:** Chair?

**The Vice-Chair (Mrs. Laura Albanese):** Mr. Delaney?

**Mr. Bob Delaney:** A 10-minute recess, please.

**The Vice-Chair (Mrs. Laura Albanese):** The committee is recessed for 10 minutes.

*The committee recessed from 1101 to 1113.*

**The Vice-Chair (Mrs. Laura Albanese):** We have a motion on the floor, presented by Mr. Tabuns. It is in order. Any discussion?

**Mr. Bob Delaney:** Chair, just a recorded vote.

#### Ayes

Cansfield, Delaney, Fedeli, Leone, Schein, Tabuns, Yakabuski.

**The Vice-Chair (Mrs. Laura Albanese):** I declare the motion carried. The motion is carried.

I believe that that's it for today. This committee will reconvene on Tuesday, next Tuesday, April 9, at 8:30 a.m. Adjourned.

*The committee adjourned at 1114.*





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**Official Report  
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(Hansard)**

Tuesday 9 April 2013



**Journal  
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Mardi 9 avril 2013

**Standing Committee on  
Justice Policy**

Members' privileges

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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE POLICYCOMITÉ PERMANENT  
DE LA JUSTICE

Tuesday 9 April 2013

Mardi 9 avril 2013

*The committee met at 0832 in room 151.*

## MEMBERS' PRIVILEGES

**The Chair (Mr. Shafiq Qaadri):** Thank you, colleagues. I call the meeting to order. As you know, justice policy is here dealing with energy infrastructures, particularly with gas plants. I think many of you know the drill by now, including our presenting witnesses.

## CITIZENS FOR CLEAN AIR

**The Chair (Mr. Shafiq Qaadri):** I'd invite Mr. Frank Clegg to please be sworn in.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Do you solemnly swear that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

**Mr. Frank Clegg:** I do.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Clegg, chairman of Citizens for Clean Air. As you know, you have a five-minute opening address, followed by a rotation of questions. Please begin now.

**Mr. Frank Clegg:** Thank you. Good morning. My name is Frank Clegg and I'm the chair of Citizens for Clean Air. C4CA is a non-profit, non-partisan, grassroots organization of concerned citizens from Oakville and Mississauga that is opposed to locating power plants unreasonably close to homes and schools anywhere in Ontario. C4CA strongly opposed the construction of the Oakville generating station for three main reasons: health, safety and process. I'll take a moment to address our concern in these areas.

For context, Oakville is located in an area called the Clarkson airshed, a stressed airshed that already exceeds Ministry of the Environment guidelines for some air pollutants, including PM<sub>2.5</sub>. While natural gas is cleaner than coal, the proposed plant would have significantly added PM<sub>2.5</sub> to our local airshed, compounding the existing problem in our region and compromising the health of local residents. Our region already has the highest rate of youth asthma in the entire province.

With respect to safety, the proposed site has no buffer zones to ensure the safety of residents. Many different sensitive infrastructures in Ontario have siting requirements or setbacks, including landfills, railways and wind farms, but not stand-alone natural gas power plants.

The health and safety risks inherent in natural gas power plants are very real. On February 17, 2010, an explosion at a not-yet-completed natural-gas-fired power plant in Connecticut killed six people and injured more than 20 others. The blast blew out windows and cracked the foundations of homes up to eight kilometres away. The proposed Oakville plant was 50% bigger than the Connecticut plant and it was to be built on a site one tenth the size. The Oakville plant would have been one of the largest proposed natural gas power plants in the country and would have been only 400 metres from the nearest home, 320 metres from the nearest school, 65 metres away from the closest office complex and only a few metres from one of the busiest railway lines in Canada—10,000 homes, 16 schools, five seniors' residences, eight daycare centres, all within just three kilometres of the site.

Our opposition to this project was supported by the town of Oakville, the region of Halton, Oakville candidates for the Liberal, PC, NDP and Green parties, and the parties themselves. C4CA was very pleased that all parties publicly committed to stop the construction of the proposed Oakville plant if they were elected. I also want to repeat our appreciation for the decision taken by the government to cancel the project.

Our experience clearly shows there are serious flaws in the procurement and siting process for natural-gas-fired power plants. The southwest GTA procurement process was mainly an engineering, finance and real estate exercise, with limited community involvement or engagement before the contract was awarded. This flaw was then amplified by the failure to properly identify and assess key risks relating to health, safety and environment before a 20-year, \$1.2-billion contract was awarded. It is difficult for us to understand or accept a procurement process where the risk assessment is conducted after the contract is awarded, particularly in an airshed already considered to be stressed by the Ministry of the Environment.

C4CA's ongoing work is being undertaken with the objective of ensuring that other Ontario communities do not have to experience what the town and the residents of Oakville had to go through. But the fact of the matter is, there is nothing today that would prevent a project like this from being built too close to an existing neighbourhood, whether you happen to live in Toronto, London, Kitchener, Ottawa or Oakville.

Bill 8, introduced by MPP Kevin Flynn, attempted to address the issue of buffer zones around natural gas power plants, but it died on the order paper, despite having all-party support.

A clear policy on siting of stand-alone natural gas power plants will (1) provide direction to planners such as the OPA; (2) provide certainty to communities and local governments; (3) address the legitimate health and safety concerns of residents; (4) level the playing field for power developers; and finally, (5) ensure consistency with siting policies and requirements for other types of sensitive developments, such as wind farms, railway corridors, landfills etc.

We urge the committee to focus on using the example of what happened in Oakville and Mississauga to create a legislative framework for siting future natural gas power plants.

**Le Président (M. Shafiq Qaadri):** Merci, monsieur Clegg, pour vos remarques introductoires. Nous commençons nos questions avec le gouvernement. Monsieur Delaney, vous avez 20 minutes.

**Mr. Bob Delaney:** Thank you for joining us today, Mr. Clegg. It's good to see you. As the chairman and the driving force for Citizens for Clean Air, would you tell us a little bit about the organization and how it came together, what you might still be doing, how you worked through that particular period regarding the gas plant?

**Mr. Frank Clegg:** The organization got started at a high school meeting. A couple of the residents in the area just sent out notices to the community and invited everybody to attend a local high school, where they presented the proposed plant—this was after the plant was announced, and so we all got together at that meeting, and people just signed up on volunteer sheets and picked a certain area they wanted to volunteer with. I knew both of the people who hosted the meeting and talked to them afterwards. We had a follow-up meeting, and we set up an executive team and then started a campaign that really was, as I said at the beginning, grassroots-related. We worked on getting street captains. We worked on getting volunteers and building awareness in the community, getting people informed and engaged, and just creating an awareness of where the plant was going to be, the limitations on the siting itself, the concerns of being so close to the homes and schools in the area. Really, that's how we came about.

**Mr. Bob Delaney:** In your five-minute opening, you had a pretty good synopsis of some of the drawbacks of the Oakville power plant. Were there any other points on that that you wished to make?

**Mr. Frank Clegg:** When the cancellation of the plant was announced, we were just starting to do some evaluations on the actual water vapour coming from the plant. The plant was going to be cooled by water coming out of Lake Ontario, and we were really starting to understand the implications of having that water vapour plume potentially going on the railway tracks or on the QEW nearby. I didn't talk about it because we really didn't finish that analysis.

0840

**Mr. Bob Delaney:** Okay. Given all of the issues that you looked into, did you think that both the town of Oakville and the government of Ontario made the right decision to relocate the power plant?

**Mr. Frank Clegg:** Yes, absolutely.

**Mr. Bob Delaney:** In the course of our discussions with some of the people who have come before the committee, one of the issues raised here has been the reference to various names of projects for the cancellation of the two plants. In the time that you spent at Microsoft, can you recall any of the project names that were used as different products such as Windows Office and perhaps Visual Studio went into development?

**Mr. Frank Clegg:** Well, there were projects—Cairo was one project that comes to mind. I haven't been there for eight years now. You're testing my memory. Cairo's probably the one that comes to mind most.

**Mr. Bob Delaney:** In other words, it was very common at Microsoft to assign project names to the development of a major project?

**Mr. Frank Clegg:** I would say every major project had a name.

**Mr. Bob Delaney:** Okay. Thank you.

Going back to some of the issues around the cancellation of the plant, there's a lot of different factors that go into determining where a power plant should be located, such as population forecasts, electricity demand, transmission availability, you know—we're on the same page on that. Would it be fair to say that sometimes these factors change and with a decision made at one point of time, sometimes it's appropriate to revisit that decision?

**Mr. Frank Clegg:** Yes.

**Mr. Bob Delaney:** Was that something that you talked about in C4CA?

**Mr. Frank Clegg:** Yes. We had referred to a document from the IESO that had been updated during the campaign to get the plant cancelled where it actually showed the forecast had changed significantly, showing less power being required in Ontario in general.

**Mr. Bob Delaney:** Was that one of the factors that C4CA took into account?

**Mr. Frank Clegg:** Well, that was part of the—one part of our messaging was that the plant isn't actually needed. So one of the alternatives that we proposed was to revisit the forecast, and you don't even need the plant.

**Mr. Bob Delaney:** Just for some scale, could you give us an estimate of the size of the local opposition against that proposed power plant in Oakville?

**Mr. Frank Clegg:** I guess the three best numbers would be the rally that we had here at Queen's Park: We had about 2,500 people who came down and protested the location. We had about 1,800 volunteers in the local community and we had recruited about 300 street captains. Our reach, though, in terms of just people who had signed up, or being able to contact them, we estimated to be over 50,000 people—

**Mr. Bob Delaney:** Wow.



**Mr. Frank Clegg:** —through our network and other—we had some associations in town that would forward our messages off and our emails off to other people. So we calculated the extended reach to be at least 50,000.

**Mr. Bob Delaney:** Mayor Burton brought in a few maps which he showed the committee to illustrate how close to residential and commercial areas that plant was. Do you recall an estimate of how many people would have been directly affected within, for example, a circle of, say, 500 metres, 1,000 metres and maybe 1,500?

**Mr. Frank Clegg:** I'm going by memory. I think within a kilometre—I know within three kilometres there was the 10,000 number that I referenced before. Within a kilometre I believe it was 1,000 homes, but that's just based on memory.

**Mr. Bob Delaney:** So it would be accurate to say that the residents of Oakville were very happy that the province listened to their concerns and made the decision to cancel the power plant?

**Mr. Frank Clegg:** Very much so.

**Mr. Bob Delaney:** Okay. Mayor Burton, when he testified before the committee on March 19, was asked about your organization. He said, and I'll use his words exactly, that he was "very impressed with the work of C4CA in winning promises to stop the power plant from every party." You touched on this in your opening remarks. Perhaps you can elaborate on the commitments of all three parties to cancel this particular plant in Oakville.

**Mr. Frank Clegg:** Well, we met with all the parties and all the candidates and were given commitments by every candidate in the Oakville area that they would support cancelling the plant.

**Mr. Bob Delaney:** In particular, do you recall what each of them may have pledged?

**Mr. Frank Clegg:** Well, I know that certainly Ted Chudleigh, who was the candidate MPP from north of Oakville, was very active in his support of cancelling the plant. During the plant battle—I'll use that word—PCs did not have a confirmed nominee but we met with two or three potential candidates, and each of them had said that they would support that. The NDP did not have a candidate at that time that I recall.

*Interjection.*

**Mr. Frank Clegg:** No, I don't think so. This was a year before the election, right? So you didn't have a candidate. From the Green Party, we had met with—I'm having a memory lapse—the Ontario leader for the Green Party, and he had been very vocal about supporting cancelling the plant.

**Mr. Bob Delaney:** So most of the meetings took place before the election of 2011 was really under way?

**Mr. Frank Clegg:** Our plant was cancelled a year before the election, so these meetings took place 12 to 23 months before the election.

**Mr. Bob Delaney:** And MPP Kevin Flynn, was he supportive?

**Mr. Frank Clegg:** Very much so.

**Mr. Bob Delaney:** Okay. Then it would be fair and accurate to say that regardless of what had happened in the 2011 election, a government by any of the three parties would have cancelled that plant based on the commitments given to you?

**Mr. Frank Clegg:** Based on the commitments given to us, yes.

**Mr. Bob Delaney:** Okay. What about at the federal level? Did the federal—either candidates or government—offer support for cancelling the power plant?

**Mr. Frank Clegg:** We tried to engage everybody in this. As you can imagine, when you're trying to do something like this you engage everybody. So we did try to get the federal government engaged but we were told that it was really more in the provincial jurisdiction, and so we were not successful in getting Health Canada or Environment Canada or anybody engaged at the federal level.

**Mr. Bob Delaney:** I'm just going to again get your reaction on another quote from Mayor Rob Burton. On September 25, 2012, he stated that—and I'll use his words again—"since all parties promised they would stop the power plant, I'm not sure (the cancellation) could have been done better or cheaper." When we asked him about this quote when he appeared at the committee, he said, "Anyone who wishes to criticize the cost of cancelling it would do everybody a favour if they would explain how they would have done it differently." Would you agree with Mayor Burton's statements on that?

**Mr. Frank Clegg:** I think the issue was that when the plant was announced without having gotten community input and done the environmental assessment, I think that's when we got into a slippery slope. I can't predict whether somebody could have done a better job, but the fact that the plant was announced without the environmental assessment being done, then we were all in trouble.

**Mr. Bob Delaney:** Just to pick up on that, Premier Wynne has committed that there's going to be more local decision-making power in the siting of energy infrastructure. In your work with C4CA, do you have any advice to help ensure that the local voice is heard throughout the process of choosing where to site a generating station?

**Mr. Frank Clegg:** Yes, we do. Actually, there's a paper on our website that we presented and have been talking about—and why we've kept involved even after the plant was cancelled—that talks about siting criteria. It's just our suggestions and recommendations on how to proceed and how to include other factors and community involvement in the proper siting of power plants in Ontario.

**Mr. Bob Delaney:** What's the domain name on your website?

**Mr. Frank Clegg:** It's c4ca.org.

**Mr. Bob Delaney:** Ms. Cansfield, I think, has a question or two for you.

**Mrs. Donna H. Cansfield:** Thank you very much for appearing. I wanted to follow up on the issue that my



colleague raised around the consultation process. There are lots of ways to go about consultation, and I always am amazed that in this wonderful world of technology, we still sometimes don't get it right. But you've been very engaged in this process for some time. Obviously, there are some lessons to be learned in terms of process and how to reach out to people.

I think all of us have been in situations where, unless there's an issue, you don't usually hear from folks. Sometimes it's really hard to even get them out to meetings. How to engage them? I guess my question to you is, what are the lessons that you learned that would help us in the future require, if necessary, or make mandatory, a process of consultation that actually would be meaningful and fulfilling?

0850

**Mr. Frank Clegg:** I'm not an expert, but when we were going through the whole campaign with the power plant, we looked around North America and around the world, and we found this process in California where they set up a committee that actually goes out and evaluates proposed sites before they even go out for tender—just brief conversations with the individuals involved. It does take a little bit more time upfront, but that gives citizens an opportunity.

The thing I like about it from a business standpoint is that if you're a proponent and you already know that that site is going to have problems, then you can decide to use that site or not. I think if citizens are aware that that site is going to be evaluated by the government and it is going to be potentially part of the procurement process, and if that's known upfront, I think people would pay attention and would actually give proper feedback.

We were aware that there were these four sites, but it was kind of innocuous and everybody kept saying, "Well, that's not real." It wasn't clear to us that that was actually a very viable candidate and that if you had any issues, you'd better get on those issues sooner than you did. I think putting more structure around it and putting a formal process that's communicated and where everybody knows what's to be expected and they know that it's going to be a candidate would encourage people to take time out of their busy lives to give you input sooner.

**Mrs. Donna H. Cansfield:** That's an excellent idea, actually. I didn't realize that there was one set up in California. And it's made up of people from the government or a combination? Do you know? Or I guess it could be made up of—

**Mr. Frank Clegg:** I don't know the details. I do know there's representation from government for sure. I don't know if there is citizens' representation, but I do know that a big part of their mandate is to go out and get the community involved, as I say, before it goes to tender.

**Mrs. Donna H. Cansfield:** I guess the other question would be around the proponents themselves and a requirement that they in fact must engage in some consultation process in addition to—I mean, the siting is one thing, and then actually informing people of what's going on, truthfully. That's the other part. People really were

concerned that they couldn't access information; they weren't able to get what they wanted. I'm talking about individual people, much less organized groups like yourself.

Should there be some sort of formal requirement within the procurement process that states that consultation must take place and that it must be somehow meaningful, and that you have to have a track record of some sort of form of consultation?

**Mr. Frank Clegg:** To be fair to industry, I think you have to be very clear what they are supposed to do, and it should be very clearly laid out what's required. As I mentioned before, there is an environmental assessment that, I would argue, should be done. Some part of an environmental assessment should be done, certainly before the contract is awarded. You could argue that it should be done before the proposal is even submitted. I think it's fair to both citizens and to industry that we need to be clear on what's expected. But, yes, I do agree that there should be more clear criteria to the proponents on what they should communicate to the community and when and how they should participate or they should offer that information to the public.

**Mrs. Donna H. Cansfield:** I guess the same would be said around the environmental processes. I think it's been somewhat of a concern about the variety of types of environmental processes there are and who gets to determine what and when. I know there were challenges around one of the other plants on the bump-up—again, clear and coherent rules around siting of power plants, period, and environmental processes.

Should there be, from your perspective and the work that you've done, a multitude of different layers of this, or should it be far more prescriptive?

**Mr. Frank Clegg:** I think it should be very prescriptive. If it's a certain size of plant—the size that went into Oakville, quite frankly, in my opinion, should have a mandatory environmental assessment, period. You couldn't put a wind turbine on that site, for example. A wind turbine is less than two megawatts of power; this one was 975 and there was no environmental assessment. So, yes, there needs to be a lot stricter environmental assessments and there should be guidelines at certain levels, and big, humongous power plants should be at the top of the chart.

**Mrs. Donna H. Cansfield:** Well, that was one of the challenges, I believe, in one of the other plants as well. They sort of flew under the radar on an environmental assessment because of the size of the plant. So maybe there needs to be some more thoughtfulness around this whole siting process in terms of what the government requires, what the people require, what the clarity is, as you say. It's recognizing you need to be fair to both industry and to the municipalities that are affected and impacted, but in particular to the residents or to the businesses that are close by.

**Mr. Frank Clegg:** I agree.

**Mrs. Donna H. Cansfield:** So of all the things that have occurred in this, what's the best lesson learned?



**Mr. Frank Clegg:** The committee has an opportunity here, as I said in my opening remarks, to take this lesson and make sure it doesn't happen to another community. Today there isn't even a basic buffer zone rule for any power plant, so a buffer zone would be a very good basic step. There should be a revisiting of the process to site power plants in our province, and I think there's an environmental part of that—you mentioned industry before. When I talked to a couple of the industry folks involved in the California situation, they actually liked that process because, as I said, if they're going to bid site A versus site B, they know right upfront whether they should do it and what the problems are going to be. Nobody knows that today, and it certainly isn't fair to the citizens, but I would argue that it's not fair to industry either, because they don't really know what the rules are.

So my lesson learned is to say, let's figure out a way. Let's go look around the world and find out who's got the best siting criteria of anybody on the planet, and let's use that in our great province that we have. Then, the rules are right upfront and people know, and if citizens know that that site is being considered, then they can get organized and put presentations together and talk about their issues, and we can end up with meeting our power needs but not putting them near homes and schools.

**Mrs. Donna H. Cansfield:** What about the issue around transmission? What did you learn?

**Mr. Frank Clegg:** I did not go near the transmission. I started to, and I think I'm pretty smart, but it's really complicated, and there is no easy answer. We had a couple of engineers, and it is not an easy thing to solve. The reality is, you need to get the power from point A to point B, and I think I saved myself a lot of time and energy by letting somebody else deal with that. C4CA did not get into transmission lines.

**Mrs. Donna H. Cansfield:** That certainly is the challenge around siting, isn't it? Yes, you can look at having the sites that are appropriate, but then you must transmit that electricity from one place to the other. So you meet resistance of a different kind when you start looking at transmission and distribution. Yet, again, at the end of the day, we all want to keep our lights on and our TVs working and our stoves and whatever else we use.

It is a challenge, but within that siting process, as you say, maybe we can learn, because others obviously have gone through this in certain jurisdictions where they've had to deal with transmission in addition to—you can't bury everything.

**Mr. Frank Clegg:** No, you can't.

**Mrs. Donna H. Cansfield:** It's very expensive, and it's not that easy—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Ms. Cansfield.

To the PC side: Mr. Fedeli.

**Mr. Victor Fedeli:** Welcome, Mr. Clegg.

Full disclosure, Chair: In my former life as mayor of the city of North Bay and in Mr. Clegg's former life as the top man at Microsoft, we did attempt to engage in business together about 10 years ago. I just wanted you to

know that right upfront. And if I can say unabashedly, I'm a huge fan of Mr. Clegg's as well, with his wonderful work at Microsoft and his work with C4CA.

Thank you, Mr. Clegg, for your dogged work at C4CA. It's much appreciated.

You and Mr. Delaney spent a tremendous amount of time talking about the siting of plants. Actually, it reminds me of the trials and tribulations that the wind turbine people in rural Ontario are having with this current government as well. You brought out the California example, which is good food for thought here. It's obvious that something needs to be done.

Let me tell you how the alternative to Oakville was sited. This might come as quite a surprise to you, and certainly, without putting words in your mouth, might be found to be a disappointment to you. A week or so ago, we had Mr. David Livingston here, who, under oath, claimed he has absolutely no expertise in the energy sector and it was he who developed the five options, one of which, in Lennox, was actually chosen. There is a document—I don't need to share it; the committee has all had it before—I'm just going to refer lightly to it as plan A, plan B, plan C, plan D and plan E from this gentleman who, again, tells the committee, "I have no expertise in the energy sector." He's the one who created five options to site the power plant. Believe it or not, one of those options was indeed accepted, and that is where this power plant is now going to be sited.

0900

So I would ask you as a business person, if, in your mind, there's a proper way and perhaps an improper way to site plants in the future? Would you have a thought on that, knowing now how the plant that is being constructed actually ended up to be sited there?

**Mr. Frank Clegg:** I don't know anything about the Lennox plant. I have no knowledge of it. I did look on the map to see if there are homes and schools nearby, and there weren't, so that was okay.

As we talked about, the more open and transparent the process can be to everybody involved, I think the fairer it is for everyone, and I think the opportunity, quite frankly, is for a better decision. In my experience, sometimes the best solutions—if you give industry the opportunity to solve the problem and you give them a good set of guidelines and frameworks, sometimes they can come back with some creative solutions.

So I can't comment on the Lennox process, but I can comment on the opportunity, as I said before, that the committee has to—in my experience, sometimes the best work that I did for the government was for free in submitting—in replying to an RFP. So I'd encourage you that you can set the criteria, notwithstanding there are transmission issues and notwithstanding that there are zoning issues and there are all kinds of issues to deal with, and let industry come back and propose it, but again, it has to be open and transparent. It has to be full disclosure. The community has to know and has to be involved. I think that's an opportunity.

**Mr. Victor Fedeli:** I would agree on the open and transparent comment wholeheartedly actually, Mr. Clegg.



Sadly, the government is sticking to their story that the move from Oakville to Lennox is \$40 million. Actually, they kind of broke off from that a week or so ago and said, "Well, maybe it's going to be more." But in an open and transparent way, we did have two witnesses here. One is an energy expert who puts the cost of Oakville alone in the \$828-million range, and we did have a vice-president from the OPA, and when you add up her numbers, the move to this Lennox site is \$929 million—just Lennox alone. She's got turbine costs in there, transmission costs in there. Because of the location, there's gas delivery and management charges in there, and of course the sunk cost of \$40 million.

Would you acknowledge or concur that in business there's a fiscally responsible way to do things and a fiscally irresponsible way? Would that be a fair enough statement?

**Mr. Frank Clegg:** I think that's a fair statement.

**Mr. Victor Fedeli:** Thank you, Chair.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli.

To Mr. Tabuns: 20 minutes.

**Mr. Peter Tabuns:** Thank you, Chair. Mr. Clegg, thanks for being here this morning. My understanding is that your organization—and maybe my understanding is incorrect; you will let me know—commissioned an energy study to see if this plant was indeed necessary. Is that correct?

**Mr. Frank Clegg:** No, we did not. No, there was no study. The only information that we used was the IESO report. So no, we did not, that I'm aware of. Let me put it this way: I didn't approve funding for that, so I don't think we did.

**Mr. Peter Tabuns:** That's entirely clear. Can you tell us which party proposed this plant?

**Mr. Frank Clegg:** The Liberal Party was in power at the time.

**Mr. Peter Tabuns:** Thank you. I don't have any further questions. I appreciate your help.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns. The government side: Mr. Delaney, 10 minutes.

**Mr. Bob Delaney:** This should also be relatively concise. I notice that Mr. Tabuns and Mr. Fedeli are trying to do a little bit of finger pointing at the current government. We do know that all three parties had committed to cancelling this plant, and I'm just going to go over a little bit of ground that we've covered.

Mr. Clegg, you've talked about Mr. Chudleigh, who said, "The people of Oakville have told you they don't want the proposed power plant, and I agree with them."

Back on October 7, 2010, Mr. Tabuns told Inside-Halton, and I'll use his words, "I don't agree with the Oakville power plant." And on December 2, 2010, NDP MPP Michael Prue said, and I'll use his words, "I'm glad the people of Oakville hired Erin Brockovich and did all the things that they did in order to have this killed." Sometimes you're told, "When the horse is dead, dismount," so let's try to do that. It's pretty clear that the NDP were opposed to this particular power plant, right?

**Mr. Frank Clegg:** Yes.

**Mr. Bob Delaney:** Okay, good. Thank you.

On the PC side, Larry Scott, the provincial PC candidate in 2011, stated in 2009, and I'll use his words, "The correct way for this to go is not to be built," referring to the Oakville power plant. And in mid-October of that year, 2009, the federal Conservative MP for Oakville, Terence Young, had submitted 133 petitions opposing the proposed power plant. So it would again be accurate to say that the Conservatives, both federally and provincially, made their opposition clear?

**Mr. Frank Clegg:** Yes, quite.

**Mr. Bob Delaney:** Okay. Finally, to put a little bit of context around some remarks made by Mr. Fedeli, who asked you, for some bizarre reason, to comment on the testimony of Mr. Livingston: Just for the record, Mr. Livingston told the committee that he had had a 30-year career in banking, and especially in his latter days in banking—I'll use his words—"I was mostly involved with the development of strategy and doing mergers and acquisitions work, so I had a fairly broad background in negotiating agreements between private sector companies."

Just before we conclude, is there anything you wanted to say to us, Mr. Clegg?

**Mr. Frank Clegg:** I'm just going to repeat my appeal to the committee to do whatever you can within your powers to make sure this doesn't happen to another community in our province. That's my only ask. No other community should have to go through what we did. I think you have the opportunity to prevent it, and I really hope you do.

**Mr. Bob Delaney:** Okay. Ms. Cansfield, I think, has one concluding comment.

**Mrs. Donna H. Cansfield:** I just wanted to say thank you as well, and for the work that you have done. You know, it's sometimes difficult to get the message out around some of the challenges that are presented, and there are lots of challenges. You've identified those, and it's complex. But at the same time, you were able to meaningfully, and with good stats and with good science, I must say, get the message out to a lot of folks. That's very appreciated—and for my community as well, because we're in the same airshed. So it certainly helped us as well. I just wanted to say thank you.

**Mr. Frank Clegg:** Well, we try. Thank you.

**Mr. Bob Delaney:** Chair, we're done.

**The Chair (Mr. Shafiq Qaadri):** To the PC side: Mr. Fedeli, 10 minutes.

**Mr. Victor Fedeli:** Thank you, Chair.

This committee is here to find out the total cost of this gas plant cancellation and who ordered the cover-up of documents. Would you have any information to add to this committee on the total cost of the Mississauga and Oakville cancellation and/or who ordered documents to be covered up, redacted or withheld?

**Mr. Frank Clegg:** I do not.

**Mr. Victor Fedeli:** Thank you, Chair.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli.

Mr. Tabuns?



**Mr. Peter Tabuns:** No further questions.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns, and thank you to you, Mr. Clegg, for your presence and stewardship of the community interest. You are now officially dismissed.

**Mr. Frank Clegg:** Thank you very much.

**The Chair (Mr. Shafiq Qaadri):** Before committee recesses, we do have an issue before this committee with regard to the report that is due, and Ms. Hindle will discuss that.

**Ms. Karen Hindle:** Good morning, members. As you know, the committee is required to report back in some form by May 21, 2013, so the procedural Clerk and I have prepared some questions that we would like you to consider with respect to the report. We're open to either discussing it immediately or coming back at a later date and discussing it.

Specifically, the questions deal with the form or the type of report that members would like to table in the House, whether it take the form of an interim report or a more final report, whether it would include recommendations and conclusions or just observations on the process thus far. There is also an opportunity for members to come up with an alternative format. We also would like to know whether the report should address simply the matter of compliance and non-compliance with the estimates committee's request for production and/or the costs associated with the cancellation and relocation of the Mississauga and Oakville plants.

**The Chair (Mr. Shafiq Qaadri):** I take it from the overwhelmed, uncaffeinated looks on the faces of my colleagues that they will need at least until this afternoon to decide these issues.

**Ms. Karen Hindle:** That's fine.

*Interjections.*

**The Chair (Mr. Shafiq Qaadri):** Or more—fair enough. Mr. Delaney.

**Mr. Bob Delaney:** Chair, in the interests of expediting that, may I suggest that we convene a meeting of the subcommittee to discuss that very topic?

**The Chair (Mr. Shafiq Qaadri):** We have a full committee meeting this afternoon, so that's—

**Mr. Bob Delaney:** I know, but in subcommittee we might be able to come to a consensus to bring back to the committee.

**Mr. Rob Leone:** I'm not going to be able to do that today.

**Mr. Bob Delaney:** Okay.

**Mr. Peter Tabuns:** I don't think we need to do it today—

**Mr. Bob Delaney:** I'm not proposing that it be done today, but I am saying that in order to get this dealt with and get it dealt with expeditiously, we convene a subcommittee at the earliest possible time to do that.

**The Chair (Mr. Shafiq Qaadri):** That's fine. Committee is recessed till this afternoon.

*The committee recessed from 0911 to 1500.*

MR. CRAIG MacLENNAN

**The Chair (Mr. Shafiq Qaadri):** Thank you, colleagues. The committee is now in session once again. Justice policy is here, as you know, on energy infrastructure, particularly with reference to the gas plants. We ask our second witness of the day to please come forward, Mr. MacLennan. I invite you to be sworn in by the Clerk.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Do you solemnly swear that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

**Mr. Craig MacLennan:** I do.

**The Chair (Mr. Shafiq Qaadri):** Thank you. Five minutes of opening remarks, beginning now.

**Mr. Craig MacLennan:** Thank you.

I began in the office of the Minister of Energy in January 2010 and left approximately eight months ago. However, during my tenure in the office there was a period where I was absent from the office for approximately three months prior to election day in 2011.

As chief of staff, my duties included hiring staff—

**The Chair (Mr. Shafiq Qaadri):** Mr. MacLennan, if you could just speak a little louder or move closer to the mike or something.

**Mr. Craig MacLennan:** As chief of staff, my duties included hiring staff, supporting staff, advising the minister, taking meetings with stakeholders, and working with the energy agencies, the ministry and the Premier's office. I became more involved in the Oakville gas plant file in September 2010. I became more involved in regular meetings with the minister, the ministry, our deputy, the Premier's office and the OPA to become further briefed on the background information on the issue and also to support the then minister in his continued deliberations on the issue.

Following the decision of the Premier and the minister not to proceed with the gas plant, I took meetings, as needed, with the OPA, the minister, ministry officials and the Premier's office. As the secretary of cabinet also previously stated, a number of people were screened off the file two years ago; I was one of them.

I had also met with representatives of TransCanada three times, to my recollection. The first meeting I attended was just after they were given notice that the government would not be proceeding with the Oakville gas plant. Attending the meeting were myself, the minister and, I believe, our deputy minister. We also asked legal counsel to join us in the meeting to take notes. To my recollection, they discussed communications and requested that the minister not negatively position gas as a form of generation, that he not talk about it in a negative light.

The second meeting I attended was at TransCanada's request. Also participating in the meeting were my colleague from the Premier's office and the deputy minister of the time, and again we requested government legal

counsel to be present to take notes. Our deputy was the lead on the meeting and we all said very little, based on advice from legal. We listened and made no commitments. To my recollection, the primary issue was the lack of OPA's willingness to share their financial modelling with TransCanada to explain the numbers they were getting to. To my recollection, the parties were also very far apart in their negotiations.

My third meeting with TransCanada was with their director of government affairs. Prior to taking the meeting, I consulted with government legal counsel on behalf of myself and my colleague in the Premier's office who was also participating in the meeting. After significant advice and coaching from government legal counsel, my colleague Sean and I took the meeting with their government relations representative. We were instructed to make sure that the meeting was without prejudice. We did make that clear, and TransCanada did the same. To my recollection, at the meeting we heard them out but made no commitments. Following the meeting, we debriefed legal counsel on the contents of the meeting.

Changing now to the Mississauga gas plant, on the Mississauga gas plant, prior to my departure from the office of the Minister of Energy for three months prior to election day in 2011, I was involved in the initial briefings and information gathering on the issue when it first emerged in the media and when it was raised with us by caucus members as a concern of their local constituents. I was not, however, lead on the file in our office.

When I returned to the office following the election, I supported the new minister on the implementation of the campaign commitment. I did not lead the day-to-day happenings on the file, as I had deferred that to my then senior policy adviser. I was, however, aware of, and participated in, conversations on the issue in a supporting capacity.

Thank you. I welcome your questions.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. MacLennan. We'll pass to the PC side. Mr. Fedeli, 20 minutes, as you know. Begin.

**Mr. Victor Fedeli:** Thank you very much, Chair. I just wanted to tie up some loose ends on some names. In your first meeting with TransCanada, you accompanied the minister, the deputy—yourself and legal counsel.

**Mr. Craig MacLennan:** Yes, sir.

**Mr. Victor Fedeli:** The second meeting, you were with a colleague.

**Mr. Craig MacLennan:** Sean Mullin, from the Premier's office.

**Mr. Victor Fedeli:** So your Premier's office colleague was at the second meeting—

**Mr. Craig MacLennan:** Yes, sir.

**Mr. Victor Fedeli:** —and with counsel?

**Mr. Craig MacLennan:** Yes, sir.

**Mr. Victor Fedeli:** And the third meeting was with your colleague from the Premier's office, Sean—

**Mr. Craig MacLennan:** Yes.

**Mr. Victor Fedeli:** —and counsel? Did you say there was counsel?

**Mr. Craig MacLennan:** No legal counsel, but we were coached by legal counsel in advance and debriefed afterward, at the end of the meeting.

**Mr. Victor Fedeli:** Well, keeping on that tone, were you coached by any legal counsel for today's hearings—

**Mr. Craig MacLennan:** No.

**Mr. Victor Fedeli:** —or any other counsel of any type?

**Mr. Craig MacLennan:** No.

**Mr. Victor Fedeli:** Okay. Thank you. It's come up earlier today.

**Mr. Craig MacLennan:** Oh, really?

**Mr. Victor Fedeli:** Yes.

You were with the minister's office when the estimates committee first asked for documents. Is that correct?

**Mr. Craig MacLennan:** I was, sir. Correct.

**Mr. Victor Fedeli:** Who made the decision on how the ministry would deal with the documents?

**Mr. Craig MacLennan:** The ministry made the decision on how to collect the documents. Is that what you mean?

**Mr. Victor Fedeli:** For instance, we received letters at the estimates committee saying they wouldn't release the documents. There was a two-month filibuster for the next period. There were discussions, obviously, on how to handle the Speaker's decision to force you to turn the documents over, the decision on which documents would be turned over and which documents would be withheld, and the decision ultimately to redact pages. Who made those kinds of decisions? Walk us through that discussion.

**Mr. Craig MacLennan:** Sure.

**Mr. Victor Fedeli:** What happened when you first heard, "You need to turn documents over," from then on kind of thing—just for a couple of minutes, please.

**Mr. Craig MacLennan:** Sure. We didn't really know what to do. There were ongoing negotiations on both gas plants, and a lot of the information was solicitor-client privileged. I wasn't lead on the file in my office, but I understand there were heavy consultations with government—

**Mr. Victor Fedeli:** By whom? I'm just trying to get some names here. Who would have had that heavy consultation?

**Mr. Craig MacLennan:** It would have been the minister—

**Mr. Victor Fedeli:** Talking to whom?

**Mr. Craig MacLennan:** My colleague Ryan Dunn.

**Mr. Victor Fedeli:** I'm sorry?

**Mr. Craig MacLennan:** My colleague Ryan Dunn.

**Mr. Victor Fedeli:** And Ryan Dunn is where?

**Mr. Craig MacLennan:** He was in the minister's office—he's no longer there now—consulting with legal counsel on how to respond to the committee's request. Ultimately, legal counsel, as I understand it, advised that it would be difficult to release these documents while negotiations were still under way. Ultimately, as I understood it, the minister accepted that legal advice.



**Mr. Victor Fedeli:** So you're saying it was legal counsel that told you not to turn the documents over.

**Mr. Craig MacLennan:** Yes, sir.

**Mr. Victor Fedeli:** Which legal counsel would that be?

**Mr. Craig MacLennan:** Ministry legal counsel. I don't know exactly which legal counsel. I imagine it would have been—you may want to ask the deputy. I believe he's right after me.

**Mr. Victor Fedeli:** Was this in writing, was this verbal, by phone, email?

**Mr. Craig MacLennan:** I'm not sure.

**Mr. Victor Fedeli:** Okay.

You began working with the minister in January 2010.

**Mr. Craig MacLennan:** Yes, sir.

**Mr. Victor Fedeli:** The scenario I want to walk us through here: Back in the initial decision to cancel Oakville, we then came across an amount of money, and I want to talk about that. Then there was a decision to cancel Mississauga, and I want to talk about that. Then there was a decision to withhold documents, and I want to talk about that. Those are kind of the three areas I want to chat with you about.

**Mr. Craig MacLennan:** Sure.

**Mr. Victor Fedeli:** Were you aware of the \$712-million offer that was made to TransCanada that they eventually rejected?

**Mr. Craig MacLennan:** I couldn't recall it. I saw it mentioned, I believe, in the Globe and Mail, and I honestly couldn't recall it. My assumption is that it occurred after I was screened off the file.

**Mr. Victor Fedeli:** Were you aware, then, of the discussion in September 2010—September 15, actually—where the OPA was talking about the sunk costs and the fact that they're going to need to be made to pay out the value of the contract, and that that 20-year lifetime could amount to \$1.4 billion? Were you aware of that number?

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**Mr. Craig MacLennan:** I believe I was aware of the sunk costs, which they had estimated at around \$15 million to \$40 million all along. They didn't have exactly what that would be. I don't recall the billion-dollar number.

**Mr. Victor Fedeli:** You don't recall a number of \$1.4 billion?

**Mr. Craig MacLennan:** I don't, sir, no.

**Mr. Victor Fedeli:** Okay. Do we have the documents passed out, shared, yet?

*Interjection.*

**Mr. Victor Fedeli:** I'm sorry? The witness has the documents?

If you look at PC document 1, it's an email chain that talks about the \$1.4 billion, and it says, "Craig is not happy with this range." Are you the Craig they're talking about?

**Mr. Bob Delaney:** Chair?

**The Chair (Mr. Shafiq Qaadri):** Mr. Delaney?

**Mr. Bob Delaney:** Chair, could we have copies of the documents in question, please?

**The Chair (Mr. Shafiq Qaadri):** I'm sorry. Please continue.

**Mr. Victor Fedeli:** Are you the Craig that they're talking about when they say, "Craig is not happy with this range"—the \$1.4-billion number?

**Mr. Craig MacLennan:** Yes.

**Mr. Victor Fedeli:** Do you now recall that number?

**Mr. Craig MacLennan:** Yes.

**Mr. Victor Fedeli:** So you are aware of that \$1.4-billion number.

**Mr. Craig MacLennan:** I apologize for not recalling it earlier.

**Mr. Victor Fedeli:** Well, that's what the documents are for.

**Mr. Craig MacLennan:** Sure.

**Mr. Victor Fedeli:** When the decision to move from Oakville to the new Lennox site—you say you don't know about the \$712 million, but maybe you do—you do recall reading about that number. Is that more recently, or—

**Mr. Craig MacLennan:** More recently, sir, yes.

**Mr. Victor Fedeli:** I didn't bother bringing those documents because we've had them here so many days I can't actually recall the date of that one anymore.

But you do know about the \$1.4 billion.

Let's talk about some of the actual costs. All the public want to know—may I call you Craig? When I call you by your last name—we have a staffer here with almost the same name, and I'm going to use his name 10 times.

**Mr. Craig MacLennan:** Please do, Mr. Fedeli. It's fine.

**Mr. Victor Fedeli:** He has a different first name. I'll call you Craig; you call me Vic.

**Mr. Craig MacLennan:** Okay. Thanks, Vic.

**Mr. Victor Fedeli:** All the public wants to know is, how much did it cost and who ordered the cover-up? That's really all we need to find out. That's all we want to know.

So let's try to get to the cost. Let's see what you know about the cost. You've heard about the \$1.4 billion. We know that TransCanada turned down \$712 million—you have to take my word for that; I didn't bring that document. Let's talk about a little bit of the discussion, then, that has come out from energy experts and the documents that we have here: transmission lines at \$200 million; turbines at \$210 million; gas delivery and management at \$313 million to \$476 million; and the sunk costs of \$40 million. That adds up, if you take the high-end number, just in Oakville, to about \$929 million—a little less than the \$1.4 billion that you weren't happy with; I can see that.

Where do you come in in sussing out the number, the value, of the Oakville cancellation? I know you're not happy with \$1.4 billion; I can see that in the email. Where are you, then?

**Mr. Craig MacLennan:** Again, I was screened off the file two years ago. So what I can do for you, Mr. Fedeli, is talk about what numbers we were talking about back then.

**Mr. Victor Fedeli:** Okay. That's great.

**Mr. Craig MacLennan:** What we were talking about was the sunk costs. I believe that to be a very real—

**Mr. Victor Fedeli:** Plus, it says here. The sunk costs and the value of the contract—the lifetime contract of \$1.4 billion.

**Mr. Craig MacLennan:** From my knowledge, those were the only costs. Again, I think the auditor is going to give you a much better answer than I did.

One of the costs that also often gets thrown around as something associated with this would be the transmission costs. From my understanding with the OPA, what gave us comfort in green-lighting a plant, to relocate a plant, was not only had the supply needs changed in the area, but that planned transmission that was going to be done in the area could have been moved up closer to—

**Mr. Victor Fedeli:** So, you know, we hear two different stories from everybody. Some people say the supply needs changed. There's other emails here in a slide show. I didn't bring that one either; I didn't think I'd have to. It very clearly says we need the power. We hear two different stories from two different groups. Every day there's a rotating aisle here of "Yes, we needed the power; that's why we had to rebuild it" or "No, we didn't need the power; that's why we cancelled it." We're just trying to get to the facts.

One of the things in that \$1.4-billion email—you talk about trying to exercise force majeure, down at the bottom. "What is 'our' liability if FM is exercised....?" What were you trying to do there? You were trying to get out of paying something by claiming force majeure for a political cancellation, but that's another story for another day. What kind of money were you trying to get out of on that one?

**Mr. Craig MacLennan:** I think I was genuinely trying to understand what force majeure was to begin with.

**Mr. Victor Fedeli:** Well, it sure isn't a political cancellation. I think you and I both know that. Force majeure is floods and a hurricane—an act of nature, I think some people would call it. Is that not fair?

**Mr. Craig MacLennan:** Can I take a minute to read this?

**Mr. Victor Fedeli:** Yes, your name's on the document. It's an email you sent, so I'm sure you will recall the document.

I just want to jump, then, to another area. If we can't nail down the transmission, the turbines, the gas delivery, the sunk costs, we'll live with the other experts who told us that it's in the \$900-million range for Oakville alone. Who made the decision to sole-source the new plant to TransCanada without going to a bid? How was that decision made?

**Mr. Craig MacLennan:** Again, I was screened off the file, but I believe the minister would need to write a directive. That's my understanding.

**Mr. Victor Fedeli:** To sole-source that contract. In the time you were, before you were screened off, was there talk about a quid pro quo, "We'll cancel this, but we'll give you a sole-sourced contract"? Is the contract part of the payment?

**Mr. Craig MacLennan:** Again, I wasn't a part of the negotiations, but my experience with it was that the thought was that the plant could be relocated to an area that needed the power, and in Kitchener—

**Mr. Victor Fedeli:** And then given to the same contractor?

**Mr. Craig MacLennan:** Yes. The contract could be transferred over to a Kitchener-Waterloo-Cambridge area that the OPA had identified as in need of power, and the local utilities had also identified a need for power. But I—

**Mr. Victor Fedeli:** So you were sourced off that; you were screened from that.

**Mr. Craig MacLennan:** Yes.

**Mr. Victor Fedeli:** Let's then go to an area you were involved in more: Mississauga.

**Mr. Craig MacLennan:** Sure.

**Mr. Victor Fedeli:** Let's jump to this. Remember I told you, we're trying to find out how much both of them are and who was involved in the cover-up. Let's go to part 2, the Mississauga \$190 million. I want you to go to doc 2. I want to ask you, in your recollection—the first announcement that your minister made was \$180 million. What happened to change that from \$180 million to \$190 million? What happened?

**Mr. Craig MacLennan:** We were given the \$180 million number by OPA. When the number of \$180 million went out, even though the OPA had affirmed that these were the direct costs, there was a case to be made that there was an outstanding \$10 million that allowed the cessation of construction and the deal to be closed, if you will. I would say it would be an error in communications.

**Mr. Victor Fedeli:** That takes us from \$180 million to \$190 million. In this doc 2 are a bunch of documents. I don't expect you to read them all. But at the end of the day, there's what's called a side deal or a side letter that gives the proponent another \$5 million. Are you familiar with any of that deal that paid them \$5 million more?

**Mr. Craig MacLennan:** Not to my recollection, no, sir.

**Mr. Victor Fedeli:** You were the chief of staff in November—this is November 20, 2011.

Primarily November 2011 is around the time. You were the chief of staff, November 20, November 21?

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**Mr. Craig MacLennan:** Yes, sir.

**Mr. Victor Fedeli:** Okay.

**Mr. Craig MacLennan:** But we also didn't get involved in their negotiations.

**Mr. Victor Fedeli:** Somebody had to approve this side deal—this urgent, actually, side deal. Who, in your opinion, then, if I can just cover some of these—"The end result is a \$5-million"—I'm quoting—"adder" ... in



a non-utility generation”—a NUG as you and I would call it—“contract for power that is not needed”—and, in my news release I call it—“and we were not supposed to know about it.” You have no knowledge, to the best of your ability, of any of this extra \$5-million side payment?

**Mr. Craig MacLennan:** I don't recall, sir. Again, I wasn't lead on the file in my office.

**Mr. Victor Fedeli:** Okay. You're the chief of staff here. You're the top guy. So you have people, I presume, working under you who are doing these deals?

**Mr. Craig MacLennan:** They would have to bring it up to the minister is my assumption. If that was the process of the OPA in order to sign off on it, if they felt they couldn't sign off on it, they would have to bring it up for a political—

**Mr. Victor Fedeli:** So you figure, to the best of your knowledge, the minister would have known of this \$5-million extra cost for the side deal as it's written here?

**Mr. Craig MacLennan:** I think you'd have to ask him for certainty, but if the OPA felt that in doing a side deal they couldn't execute it on their own, their recourse would be to naturally raise it with either the minister's office or the minister directly.

**Mr. Victor Fedeli:** Okay. I just want to go back to your timeline again. When were you taken off the file?

**Mr. Craig MacLennan:** About two years ago this month.

**Mr. Victor Fedeli:** Give me the date, in your opinion.

**Mr. Craig MacLennan:** I believe it was April this week, two years ago.

**Mr. Victor Fedeli:** April 2011 you would have been taken off the file?

**Mr. Craig MacLennan:** Yes.

**Mr. Victor Fedeli:** What was the word you used? Swept?

**Mr. Craig MacLennan:** Screened.

**Mr. Victor Fedeli:** Screened off the file. Okay. You're not familiar at all with the run-up to the \$712-million offer—

**Mr. Craig MacLennan:** I couldn't recall it.

**Mr. Victor Fedeli:** —that was made to TransCanada in April 2011?

**Mr. Craig MacLennan:** I couldn't recall it. I know there was a request that OPA made to TransCanada to go to government. I think there's documents that testify to that. I know one of the meetings that I referenced in my opening was, I believe, one of those attempts to go to government, but I don't believe we executed—during my tenure—on a side offer.

**Mr. Victor Fedeli:** Okay. Well, I wasn't talking about the side offer now.

**Mr. Craig MacLennan:** Oh, sorry; bad language.

**Mr. Victor Fedeli:** I'm back on the TransCanada deal.

**Mr. Craig MacLennan:** A counter-offer, if you will.

**Mr. Victor Fedeli:** So you're screened off the file—just tell me that one more time—around when?

**Mr. Craig MacLennan:** I believe April 2011.

**Mr. Victor Fedeli:** Do you know the date in April? I don't mean to be petty, but there's a lot—

**The Chair (Mr. Shafiq Qadri):** About a minute left, Mr. Fedeli.

**Mr. Craig MacLennan:** Sorry, I don't, sir.

**Mr. Victor Fedeli:** Let's talk about the cover-up again. At the end of the day, who ordered the documents not to be turned over to the estimates committee?

**Mr. Craig MacLennan:** It's my understanding that legal counsel from both the OPA and the ministry advised that it would undermine negotiations and recommended that they not be handed over, and it was ultimately the minister's decision to accept or decline that.

**Mr. Victor Fedeli:** How much time is there?

**The Chair (Mr. Shafiq Qadri):** Ten seconds.

**Mr. Victor Fedeli:** There's not enough time to ask you the question; I'll get back to you.

**Mr. Craig MacLennan:** Okay.

**The Chair (Mr. Shafiq Qadri):** Thank you, Mr. Fedeli.

To Mr. Tabuns, 20 minutes.

**Mr. Peter Tabuns:** Thank you, Chair. Thank you, Mr. MacLennan.

**Mr. Craig MacLennan:** Thank you. You can call me Craig.

**Mr. Peter Tabuns:** I know, I know.

**Mr. Craig MacLennan:** We've known each other for a while.

**Mr. Peter Tabuns:** You noted that you were present at three meetings with TransCanada Enterprises—

**Mr. Craig MacLennan:** Yes, sir.

**Mr. Peter Tabuns:** —that notes were taken and in one instance you debriefed legal counsel.

**Mr. Craig MacLennan:** Yes, sir.

**Mr. Peter Tabuns:** Are those notes still in your personal possession?

**Mr. Craig MacLennan:** They would be in legal counsel's personal possession. They took the notes, and I'm sure they're here.

**Mr. Peter Tabuns:** Then I will make note to you, Mr. Chair, that I will bring forward a motion to secure those notes so that they're available to this committee.

**The Chair (Mr. Shafiq Qadri):** Thank you, Mr. Tabuns. Noted.

**Mr. Peter Tabuns:** You, in response to questions from Mr. Fedeli, were saying that you weren't the lead on Greenfield South?

**Mr. Craig MacLennan:** Correct.

**Mr. Peter Tabuns:** Who was?

**Mr. Craig MacLennan:** There would be two leads: one before the campaign and one after. Before the campaign, it was my colleague Jon Feairs.

**Mr. Peter Tabuns:** Feairs?

**Mr. Craig MacLennan:** And I believe when I was away, the acting chief of staff was Andrew Mitchell, who also may have had dealings on the file. After the campaign, it was my colleague Chris Cheung.

**Mr. Peter Tabuns:** Chris Cheung?

**Mr. Craig MacLennan:** Yes, sir.



**Mr. Peter Tabuns:** Okay. I just wanted to get that out of the way.

You have documents before you, and the first one is “Ministerial Briefing, Southwest GTA Options” by the OPA. That’s February 2010.

**Mr. Craig MacLennan:** Yes.

**Mr. Peter Tabuns:** The contract with the OPA was signed at the end of September 2009—maybe the first week of October 2009. Within four months, the OPA and the ministry were trying to get out of the contract. People had been directed to look at options and say, “How do we get out of this?”

When you’re looking at cancelling a contract within four months, something is messed up badly. Who messed up? What happened?

**Mr. Craig MacLennan:** I was in the latter half of that. I wasn’t a part of the contracting of it. What we had heard from the community was significant backlash, and I wouldn’t say that our decision to not proceed with it got firmed up until much later, until we saw that—while we wanted to respect the needs of the community, it wasn’t until when we went through the long-term energy planning process that we found the plant wasn’t needed.

**Mr. Peter Tabuns:** I’ll come back to the long-term energy plan, but I find it quite something that within three to four months of signing a contract, you’re already looking for ways to get out of it. It says to me that there was a fundamental error made, and that was not discussed in your office? Was it not said, “How did we get into this? How do we get out of this?”

**Mr. Craig MacLennan:** There were significant discussions on how to get out of it and what our options available to us were, whether it was “Legislate a solution,” “Do nothing,” “Relocate”—I’m sure I’m forgetting a couple of other ones, but there were significant conversations in the office. To be upfront, I don’t think we questioned that it was signed as much as it was and it was done by our predecessor—all of our predecessors, and that we were kind of stuck dealing with something.

**Mr. Peter Tabuns:** At the time, in the options that were given to you, this was said: “Exiting the contract will take a long time if we try to minimize our costs. Conversely, if we repudiate the contract to make a quick exit, it will cost ratepayers millions in potential damages.” So you already knew at that point, within four months of signing the contract, that you were in trouble, that there was a course that you could take, but it would probably overlap with the coming election. Can you tell us about the conversations you had in the minister’s office about how saving ratepayers money would put you in an election with this issue still live?

**Mr. Craig MacLennan:** Again, my part in the discussions was based primarily on the supply needs in the area. It wasn’t an election issue for me in my advice to the minister. I can’t testify to what the minister’s decision-making was, what he weighed and what he didn’t weigh and what the pros and cons of those were. But my advice came together on a supply-need policy standpoint.

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**Mr. Peter Tabuns:** So supply needs change dramatically in four months?

**Mr. Craig MacLennan:** We learned through the long-term energy planning that they did change. Again, as I started with and said earlier, there was a big lead-up where we may have gotten these things but the OPA was still telling us that we needed the power in the area. Regardless of this, we felt a duty to keep the lights on. The air conditioning was growing; the houses were getting bigger and bigger. Again, it wasn’t until the long-term energy plan, when we realized a transmission solution could be found and the supply needs of the areas had changed, that we really made the decision—the minister made the decision.

**Mr. Peter Tabuns:** I’ll just go back for a second. As far as I know, even from the beginning the OPA knew that they had a choice of building generation or transmission lines.

**Mr. Craig MacLennan:** Correct.

**Mr. Peter Tabuns:** This wasn’t new. So you knew from the beginning that you had these choices.

**Mr. Craig MacLennan:** I would say they always knew that they would have to upgrade the transmission, so they would have to do two transmission lines. If I’m getting this correct—I’m sure someone from the OPA will correct me if I’m wrong—bring in transmission immediately was what they thought, and the supply needs were what they thought, but eventually upgrade as well. Based on their advice, what we found was that they didn’t have to do those transmission solutions immediately to bring power into the area, because the supply needs had changed, but that those out-year transmission solutions did still need to be done, and those could be brought up to meet the needs of the area.

**Mr. Peter Tabuns:** I’m going to just ask about a document that we’ve been looking for and you may be familiar with. Apparently on February 17, 2010, the OPA sought an external legal opinion on potential consequences of cancelling the Oakville generating station contract. Are you familiar with this document at all? No?

**Mr. Craig MacLennan:** February of what year; I’m sorry?

**Mr. Peter Tabuns:** February 17, 2010. It would be consistent with the OPA saying, “We’ve got a huge problem here. These are the options for getting out.”

**Mr. Craig MacLennan:** I may have seen it. I can’t recall right now. If you have it handy, I’m happy to look at it.

**Mr. Peter Tabuns:** No, I don’t. I’m asking you because I’m trying to determine its existence and location.

**Mr. Craig MacLennan:** Okay. Got it.

**Mr. Peter Tabuns:** James Girling in your legal service branch gave an opinion on August 27, 2010, saying the government didn’t have to clear the way for Trans-Canada Enterprises. It was running into all these problems with municipal bylaws, interim control bylaws. They had come to you. They asked for relief. They said, “Please overturn these municipal bylaws.” You were told



in August 2010 that the risk of legal action was low if you just left TransCanada to its own devices. That isn't the decision that was made.

**Mr. Craig MacLennan:** Correct.

**Mr. Peter Tabuns:** We got stuck, as legal counsel warned, with a very big bill. Why didn't you take the low-cost approach to dealing with this problem?

**Mr. Craig MacLennan:** I would say I wasn't the decision-maker on the file. As a staffer, all we can do is provide advice to ministers and Premiers and—

**Mr. Peter Tabuns:** It's very strange to me that a chief of staff would not be drawn in by a minister for a discussion on an issue as important as this. I don't think of you as being in a junior position. You had a lot of authority. Your advice would have been sought. Were you ever asked, "Gee, should I blow the bank, or should I take it easy on ratepayers in this decision?"

**Mr. Craig MacLennan:** I don't recall; I'm sorry, sir.

**Mr. Peter Tabuns:** From the testimony we got from Jamison Steeve, it appears that your office and you were dealt out of the negotiations with TransCanada Enterprises. Who was running the show on this deal? You came in very late in the game, according to your earlier testimony today.

**Mr. Craig MacLennan:** After we were screened off?

**Mr. Peter Tabuns:** No. Who was running the show in the summer of 2010 when the government was wrestling with this?

**Mr. Craig MacLennan:** On Oakville or Mississauga?

**Mr. Peter Tabuns:** On Oakville; sorry. I'm just asking you about Oakville at this point.

**Mr. Craig MacLennan:** I'm not sure.

**Mr. Peter Tabuns:** So, you're the chief of staff to the minister and you were out of the loop entirely on the negotiations that were going on with TransCanada Enterprises?

**Mr. Craig MacLennan:** After I was screened off, yes.

**Mr. Peter Tabuns:** No, you weren't screened off until after TransCanada said that it was going to proceed with legal action. So you were screened off much later than that. In the summer of 2010, you weren't even involved in negotiations.

**Mr. Craig MacLennan:** As I recall, negotiations began in October.

**Mr. Peter Tabuns:** The first meeting Jamison Steeve had with TransCanada Enterprises was June-July 2010.

**Mr. Craig MacLennan:** Right. I wasn't at those meetings.

**Mr. Peter Tabuns:** No, you weren't. Why, as chief of staff, were you not part of this process?

**Mr. Craig MacLennan:** I don't know.

**Mr. Peter Tabuns:** Were you aware that people were working around you, that your ministry was being operated by remote control?

**Mr. Craig MacLennan:** No.

**Mr. Peter Tabuns:** Okay. You've told us about your meetings with TransCanada Enterprises, so I know you were involved there. Were you ever made aware as to

whose decision it was that TransCanada Enterprises needed to be made whole in this process?

**Mr. Craig MacLennan:** I had heard after the fact that there was a meeting that took place where TransCanada thought they heard somebody say that or agree to that, but I wasn't at the meeting so I don't have any proof of that. I believe the proponent, TransCanada, used it as part of the negotiations, as was conveyed to me by folks at the OPA.

**Mr. Peter Tabuns:** So to your knowledge, it wasn't something that was conveyed to TransCanada by the government. It was a position put to the government by TransCanada?

**Mr. Craig MacLennan:** That was my understanding, and I don't know if anybody agreed to that. Again, I wasn't in the meeting, but there should be legal notes from that meeting. We sent legal counsel to that meeting as well.

**Mr. Peter Tabuns:** You say that the decision—the way was opened to cancelling this plant through the assessment done with the long-term energy plan. Who was the core leading the long-term energy plan?

**Mr. Craig MacLennan:** That's a good question. It was a collaborative process. We started by inviting the public for their input and then took regular meetings with just—similar to a budget process is how we set it up. So we invited bureaucrats in from the OPA, the ministry—

**Mr. Peter Tabuns:** Can I go back? I'm sorry; I didn't ask my question precisely enough.

**Mr. Craig MacLennan:** Sure.

**Mr. Peter Tabuns:** Which senior people in your ministry and the OPA led the process? Were you one of the leaders?

**Mr. Craig MacLennan:** I participated in many, many meetings on it, yes, sir.

**Mr. Peter Tabuns:** Who chaired those meetings?

**Mr. Craig MacLennan:** The minister did.

**Mr. Peter Tabuns:** The minister did. So you knew you had a problem in Oakville. When we've gone through the documents we've been given, I've never seen one saying, "Thank goodness, we finally figured out we don't need to build Oakville." When did it become apparent in the long-term energy plan process that you had an option?

**Mr. Craig MacLennan:** You should see a deck in the long-term energy process that says we don't—the supply needs of the area have changed and we can use a transmission solution. There should be a deck to that effect that was presented by the OPA. We were also, at the same time, comparing and trying to figure out what the best supply curve for the province would be. Were we expecting moderate supply, no supply growth or—sorry; demand—no demand growth, flat demand growth, moderate or excessive demand growth, and it fell out of that discussion.

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**Mr. Peter Tabuns:** So did you ever get an email saying, "Eureka, we're saved. The projections show that we don't have to do anything here"?



**Mr. Craig MacLennan:** No. It would have been a deck. It would have been a deck for discussion. As it was set up, it was a boardroom like this, and the OPA would come in and present, the ministry would come and present, and it was divided by issue. So one day we would deal with gas plants; one day it would be green energy, nukes. "How do we deal with all of this? What is our overall supply?" It was a very collaborative process. And then we had brought in the senior leadership from the OPG and the IESO and Hydro One to validate if everything made sense.

**Mr. Peter Tabuns:** You know, some of my colleagues around the table may have read every document. I don't claim that, but I have scanned fairly quickly, and I don't think I've seen anything that corresponds to what you've just outlined.

**Mr. Craig MacLennan:** It's all in there.

**Mr. Peter Tabuns:** It's all there?

**Mr. Craig MacLennan:** Sixty-nine pages—67 pages.

**Mr. Peter Tabuns:** And were you responsible for pulling together the documents that were to be presented at the demand of the estimates committee?

**Mr. Craig MacLennan:** Was I? No.

**Mr. Peter Tabuns:** Notes from Michael Barrack, TransCanada Enterprises counsel, indicate that your minister was in a meeting with TransCanada Enterprises' Sean Mullin and David Lindsay. Notes indicate that Minister Duguid told TransCanada, "System's changed. Energy plan by the end of the year at the latest," and I think Mr. Fedeli has quoted this previously, to which TCE noted, "TCE responds angrily"—blew a gasket—"we already have a deal—go talk to your bosses."

Why was your minister not kept abreast of what was going on in the discussions with TransCanada? Was there an obvious rift between the minister and the Premier's office?

**Mr. Craig MacLennan:** No. So I would—do you have that note handy?

**Mr. Peter Tabuns:** I do not have it with me, no.

**Mr. Craig MacLennan:** Do you recall the date?

**Mr. Peter Tabuns:** It would have been in roughly early October 2010.

**Mr. Craig MacLennan:** I believe I was at the meeting as well. I believe it's one of the meetings I referred to in my opening, and I don't recall that as the discussion. It was primarily an issues discussion around how the minister would communicate gas in his communications when he made the statement. I'm not saying the legal notes are wrong. Sorry, what do they say? The minister—

**Mr. Peter Tabuns:** That the minister said that the system's changed; energy plan by end of the year. TransCanada blew a gasket, said they already had a deal.

**Mr. Craig MacLennan:** I'm not sure what deal they're referring to.

**Mr. Peter Tabuns:** I think an agreement with the Premier's office that they'd be kept whole.

Okay: January 24, 2011, Susan Kennedy of the OPA wrote an email to her colleagues saying the directive being prepared for the OPA indicated that the MO, the

minister's office, was dead set against any reference to costs.

**The Chair (Mr. Shafiq Qaadri):** About a minute, Mr. Tabuns.

**Mr. Peter Tabuns:** Okay.

Why was that?

**Mr. Craig MacLennan:** I'm not sure. Do you have the email that I could look at?

**Mr. Peter Tabuns:** I don't, with me.

Do you know why your office didn't want reference to costs in any directive to the OPA?

**Mr. Craig MacLennan:** On what date?

**Mr. Peter Tabuns:** In January 2011.

**Mr. Craig MacLennan:** It may have been because costs may not yet have been finalized; that would be my assumption. I can't say for certain.

**Mr. Peter Tabuns:** The reference that I'm aware of is different from that, but when I get back to my 10-minute rotation, I'll proceed.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns.

To the government side: Mr. Delaney, 20 minutes.

**Mr. Bob Delaney:** Good afternoon, Craig. I just want to ask you a few questions about your role and involvement. We may cover some of the same ground you have covered before.

You began to serve as chief of staff at energy in January 2010 under Brad Duguid?

**Mr. Craig MacLennan:** Yes.

**Mr. Bob Delaney:** And when you left on your leave, it would still have been Brad Duguid as minister?

**Mr. Craig MacLennan:** Yes.

**Mr. Bob Delaney:** Then you briefly served under Minister Bentley, post-election 2011?

**Mr. Craig MacLennan:** Correct.

**Mr. Bob Delaney:** Okay. Thank you.

Talking in general about the role of chief of staff, what sorts of things does that entail?

**Mr. Craig MacLennan:** You're responsible for hiring staff; making sure staff know what their responsibilities are; negotiating their wages with them; liaising with the deputy's office and the ministry—as one point, I was always of the belief that my entire staff should feel comfortable liaising with the ministry as well—also, supporting staff and mentoring staff, helping them through their files, answering any questions they may have; advising the minister, being one of many people advising the minister at any given time; and also dealing with caucus members and supporting caucus members of all parties on information they're looking for, and helping them through issues in their local constituencies.

**Mr. Bob Delaney:** So if one calls you chief of staff, the emphasized word is indeed "staff" rather than "chief"?

**Mr. Craig MacLennan:** That's how I always felt, yes.

**Mr. Bob Delaney:** You mentioned earlier that taking meetings with stakeholders was a part of that. Was it a big part?



**Mr. Craig MacLennan:** It was, tremendous.

**Mr. Bob Delaney:** Is it normal, acceptable practice, indeed in this and other jurisdictions in this and other times, for the chief of staff to meet with stakeholders?

**Mr. Craig MacLennan:** Yes.

**Mr. Bob Delaney:** As chief of staff during that time period, were you aware of the local opposition in both Mississauga and Oakville to the power plants?

**Mr. Craig MacLennan:** Yes, very aware.

**Mr. Bob Delaney:** Since these were major issues at the time, would it then have made sense that as chief of staff, you would have been involved in helping to implement the decisions?

**Mr. Craig MacLennan:** Yes, but also gathering information about what was at issue, listening to the needs of the community.

I think you had Frank Clegg here earlier this morning. I had met with Frank a couple of times to listen to what his concerns were.

**Mr. Bob Delaney:** Okay. To your knowledge, can Ontario's Ministry of Energy overrule a city of Mississauga zoning decision?

**Mr. Craig MacLennan:** Probably.

**Mr. Bob Delaney:** To your knowledge, can the Ontario Ministry of Energy overrule a Mississauga or Oakville municipal bylaw?

**Mr. Craig MacLennan:** Probably.

**Mr. Bob Delaney:** Okay. How would you clarify your involvement in some of the meetings with the proponents of the Oakville power plant?

**Mr. Craig MacLennan:** I think I've been pretty clear, but thank you for the question. We listened to them when it was clear to us that the OPA had suggested that they go to us, and we said very little. We didn't want to get ourselves involved. From my standpoint, I didn't want to get involved in negotiations. That's about it.

**Mr. Bob Delaney:** Which others were aware that you would have been meeting with TransCanada?

**Mr. Craig MacLennan:** Our legal counsel.

**Mr. Bob Delaney:** Just the legal counsel?

**Mr. Craig MacLennan:** Legal counsel, our deputy, our ministry, the Premier's office and I believe the OPA through our legal counsel to their legal counsel. We expected them to give them notification or a heads-up. That was our hope.

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**Mr. Bob Delaney:** Okay. In your understanding, why were you, as the words have been used, screened out of the discussion?

**Mr. Craig MacLennan:** I was told that I was screened out to limit potential litigation testimony.

**Mr. Bob Delaney:** A few questions about Oakville—

**Mr. Craig MacLennan:** And I had no reason to fight with the Ministry of the Attorney General lawyers on that. I took that advice and was kind of happy to be off the file.

**Mr. Bob Delaney:** That was probably very wise.

What were some of the factors that went into the decision to cancel the proposed Oakville power plant?

**Mr. Craig MacLennan:** I think you'll want to ask that question to the decision-makers themselves, but I can provide my advice, if that's helpful. My advice was—again, I think you've heard me say this before—that we had changing supply needs in the area, a transmission solution could be found, force majeure wasn't necessarily a certainty, there was clearly a community that didn't want it and there was a good likelihood that it could be relocated to an area that needed it.

**Mr. Bob Delaney:** Okay. A recurring issue that's come up an awful lot with Oakville was the concern about the risks of litigation between TransCanada Energy and the town and the province. Was some of the discussion around efforts to see if there was an alternative to litigation?

**Mr. Craig MacLennan:** I don't recall. I think relocation is an alternative to litigation.

**Mr. Bob Delaney:** What were some of the risks that might have borne on the taxpayers if TransCanada Energy was successful in legal action against the province?

**Mr. Craig MacLennan:** The entire amount of their settlement, without any electrons at the end of the day resulting from it.

**Mr. Bob Delaney:** So there was a possibility that whatever costs have been incurred including sunk costs and other costs might have been even higher.

**Mr. Craig MacLennan:** Potentially.

**Mr. Bob Delaney:** The solution of renegotiating with TransCanada Energy to build a different plant—was that seen as a better alternative than terminating the existing contract and incurring the risk of litigation?

**Mr. Craig MacLennan:** Again, I've given you what my advice to my minister was. I think that's a better-placed question for the minister and the Premier.

**Mr. Bob Delaney:** There have been some suggestions that the province bore some of the costs and risks for TransCanada Energy because the company was concerned the project itself wouldn't move forward as a result of municipal opposition, which of course is complete speculation. Our understanding is that while the municipality had enacted bylaws to try and prevent construction, there was at that time no assurance—

**Mr. John Yakabuski:** Point of order, Mr. Chair?

**The Chair (Mr. Shafiq Qaadri):** Mr. Yakabuski.

**Mr. John Yakabuski:** Chair, we've been through 40 minutes of testimony in which the witness can't answer questions that quite likely he should have an answer to, yet—

**The Chair (Mr. Shafiq Qaadri):** Mr. Yakabuski, though always entertaining, I don't believe that's a—

**Mr. John Yakabuski:** —Mr. Delaney is asking him to speculate on what he thinks the cost may have been when if he doesn't have the knowledge or can't answer questions on what he should have knowledge of, how can we expect him to have knowledge on—

**The Chair (Mr. Shafiq Qaadri):** I thank you for your edification. Please continue, Mr. Delaney.



**Mr. John Yakabuski:** —that he knows nothing about.

**Mr. Bob Delaney:** Given that I hadn't even finished the question, I'm sure Mr. Yakabuski shouldn't speculate on what I was going to ask.

Just to recap, my understanding is that while Oakville had enacted some bylaws to try and prevent the construction, there was no assurance that these municipal bylaws either couldn't or wouldn't ultimately be overruled by the Ontario Municipal Board, which was seen as a possibility since that site had at the time been zoned industrial in the city's official plan. Does that ring a bell?

**Mr. Craig MacLennan:** Correct.

**Mr. Bob Delaney:** Okay. Then to ask: At the time, was it seen as prudent to negotiate with TransCanada Energy as early as possible rather than to leave it up to chance and speculate on the outcome of either litigation or a decision by the Ontario Municipal Board?

**Mr. Craig MacLennan:** Again, I think that's a question best posed to my minister or the Premier on the exact timing, but, yes, that does sound accurate.

**Mr. Bob Delaney:** Okay. Now, if the province had waited to intervene, as has occasionally been suggested, or if permits had been issued and construction started—I'm referring to Oakville—might the sunk cost of relocating the Oakville power plant have been much higher?

**Mr. Craig MacLennan:** Yes; correct.

**Mr. Bob Delaney:** Okay. Do you have any idea how much higher?

**Mr. Craig MacLennan:** It would have depended on how far along they were in construction.

**Mr. Bob Delaney:** Then we won't speculate anymore on that.

I'd like to ask a couple of questions regarding some of the motions and the document search exercise—a few questions around Mr. Leone's motion at estimates in May 2012 for correspondence related to the two gas plant relocations. I'm sure you're aware that some 56,000 documents were provided to the committee—that being the estimates committee—by both the Ministry of Energy and the OPA to comply with that request. It's familiar?

**Mr. Craig MacLennan:** Yes.

**Mr. Bob Delaney:** How come a number of document releases occurred?

**Mr. Craig MacLennan:** I would say that I was there for the first one but not for subsequent ones. I left the office, as you'll recall from my testimony, eight months ago. I believe the ministry was leading the search and the OPA was leading their search. As I understand it, they didn't necessarily search all the search terms that they should have or all the email boxes that they should have, which, I guess, is an honest mistake that they came forward with. I'm getting this second-hand through the media myself, to be perfectly honest.

**Mr. Bob Delaney:** Okay. Then let's focus on the one initial search that you were there for. The secretary of cabinet, the ministry staff and the OPA have consistently

stated that those searches were conducted in good faith. Is that your understanding?

**Mr. Craig MacLennan:** I believe they were, yes, sir.

**Mr. Bob Delaney:** Okay. Anything you want to tell us about those particular document searches?

**Mr. Craig MacLennan:** No, we had no impact on the document searches for the ministry and the OPA whatsoever.

**Mr. Bob Delaney:** We've heard numerous allegations that the different document releases occurred because of some form of undefined cover-up. What do you think of that allegation?

**Mr. Craig MacLennan:** I don't believe that to be fair, no.

**Mr. Bob Delaney:** Okay. Some discussion about the commercial sensitivity of the negotiations, then—Chair, how am I doing on time?

**The Chair (Mr. Shafiq Qaadri):** About seven minutes—six minutes.

**Mr. Bob Delaney:** Okay; thank you. Based on your understanding of the discussions with the two companies to relocate the Oakville and Mississauga power plants, would it, in your opinion, be correct to describe the negotiations as commercially sensitive?

**Mr. Craig MacLennan:** Yes.

**Mr. Bob Delaney:** Why?

**Mr. Craig MacLennan:** Because you never want to put out in public your negotiating hand lest your counterparty negotiate you up to it.

**Mr. Bob Delaney:** In other words, to try to ensure that, from the vantage point of the province, we got the best possible deal for the Ontario taxpayer?

**Mr. Craig MacLennan:** Correct.

**Mr. Bob Delaney:** Okay. While the negotiations were ongoing, it was during that time that the request was made by the estimates committee for the production of correspondence related to these two plants by the Ministry of Energy, the Minister of Energy and the Ontario Power Authority. In your recollection, at the time, how significant would you think the risks might have been to these negotiations if commercially sensitive details, which you may or may not have known, were made public before the deals themselves had been signed and finalized?

1600

**Mr. Craig MacLennan:** Because I was screened off Oakville, I'll speak to Mississauga.

**Mr. Bob Delaney:** Okay.

**Mr. Craig MacLennan:** What Mississauga had was—there was an approved negotiating mandate, and the potential for the counterparty to negotiate up to the negotiating mandate that was approved by government would have been a risk to the negotiations.

**Mr. Bob Delaney:** Again, talking about some of the document production, when it came to responding to the motion, what was the overriding concern in responding to the motion at the time, from your perspective?

**Mr. Craig MacLennan:** From our perspective, it was tough. We wanted to be very responsive and respectful to



the committee, but legal counsel was advising us that that would put at harm the negotiations. I know the minister at estimates had said repeatedly, "When they're done, I'm happy to share them. When they're done, I'm happy to share them." Unfortunately, that wasn't acceptable, which is the committee's prerogative. But ultimately, as was conveyed to me, based on legal advice, the minister decided to not release the documents to protect the people.

**Mr. Bob Delaney:** A few questions relating to the lead-up to the 2011 election: Were you paying close attention to the policies and the commitments of the three parties at the time, as related to these two gas plants?

**Mr. Craig MacLennan:** Yes.

**Mr. Bob Delaney:** Okay. Is it fair to say that all three parties had planned to cancel and/or relocate both the Mississauga and Oakville power plants?

**Mr. Craig MacLennan:** Yes, sir, that is what we had heard.

**Mr. Bob Delaney:** While he was here giving testimony, the mayor of Oakville, Rob Burton, told the committee that he had "won promises from all parties to stop the proposed power plant." And with the Mississauga power plant, Mayor McCallion confirmed, and I'll use her words, "I think all parties would have cancelled it." We have in the House and in committee tabled transcripts and campaign literature and telephone scripts that highlight the commitments made by especially the opposition to either move or cancel the plants.

Does it surprise you to hear any backpedaling from either the PCs or the NDP in opposition to a commitment that they had made firm, should they form government?

**Mr. Craig MacLennan:** Yes.

**Mr. Bob Delaney:** How are we doing on time, Chair?

**The Chair (Mr. Shafiq Qaadri):** About a minute and a half.

**Mr. Bob Delaney:** About a minute and a half?

**Mr. John Yakabuski:** You're done.

**The Chair (Mr. Shafiq Qaadri):** No, Mr. Yakabuski, he has about a minute and a half.

**Mr. Bob Delaney:** Well, I have a few more and I think I'm going to wait until my next rotation for those, so thank you, Chair.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney.

To the PC side, Mr. Fedeli.

**Mr. Victor Fedeli:** Thank you, Chair. In the testimony with Mr. Delaney, you said there was a mandate. What was the approved negotiating mandate for Mississauga?

**Mr. Craig MacLennan:** You'd have to check—

**Mr. Victor Fedeli:** You were there. You said you couldn't give them the approved negotiating mandate for Oakville because you were screened off, but there was an approved—a number, a high-end number, a top end.

**Mr. Craig MacLennan:** Sure.

**Mr. Victor Fedeli:** What was the top-end number in Mississauga?

**Mr. Craig MacLennan:** I don't recall the number. It was a deck that went to—

**Mr. Victor Fedeli:** Okay. You don't recall that one either.

On public accounts, when we're doing the Ornge scandal, documents of a confidential nature are deposited with the Clerk and we can go in and look at those documents privately and confidentially, where they're not made public. Was that not considered as an option for any of these documents? You immediately defaulted to hide the documents from them. Is that what happened?

**Mr. Craig MacLennan:** As it was explained to me, I believe the committee was also offered an in-camera review.

**Mr. Victor Fedeli:** I'm sorry? Well, I'll pass that over to my colleague in a moment. You can have that out with him.

There's a document 5; it doesn't really matter. All it does is show that on Wednesday, April 13, you're still there. You're corresponding on confidential documents with other people—Halyna Perun—on speaking notes and whatnot on April 13. That's a Wednesday.

Document 4 outlines that on Thursday, April 21—with the weekend in there; a few days later—the \$712-million contract was turned over and turned down. I know you told me you didn't hear of the \$1.4-billion contract or number until I showed you the email. Are you telling me that on the 13th of April, when you were still working and on top of this file, and on the 21st of April, a few days later, a settlement offer was put together and presented and rejected, that you were not aware of a \$712-million number? Is that what you're telling me?

**Mr. Craig MacLennan:** I believe that's my recollection, sir.

**Mr. Victor Fedeli:** Well, look, I'm going to have to pass this on to my colleague. We have another Liberal witness, another chief of staff, Chair. Twenty-two times Mr. Livingston said, "I don't recall," and now you're doing the same thing. I'm afraid the cover-up continues. I'll pass this on to Mr. Leone.

**Mr. Rob Leone:** My questions are going to revolve around what happened in the estimates committee as your role of chief of staff.

**Mr. Craig MacLennan:** Sure.

**Mr. Rob Leone:** Now, you stated earlier in testimony that Minister Bentley decided to follow the legal advice to essentially issue a letter stating that he can't release documents. Did you see that letter?

**Mr. Craig MacLennan:** I did, yes, sir. That's my understanding of what happened.

**Mr. Rob Leone:** Okay. What was the range of potential options that you were considering with respect to the committee's request?

**Mr. Craig MacLennan:** I believe, from my recollection, going to sign the committee in to review the documents in camera was the second option, something that I believe we got as an idea from the Afghan detainees scenario where individuals, if I recall correctly, were

almost sworn into cabinet for the day to review the documents.

**Mr. Rob Leone:** So why was that option not presented to the committee?

**Mr. Craig MacLennan:** I thought it was.

**Mr. Rob Leone:** It wasn't.

**Mr. Craig MacLennan:** Okay.

**Mr. Rob Leone:** What other options? Was there ever a potential of just releasing the documents that were requested?

**Mr. Craig MacLennan:** Yes. That would have been the other option, and I know—I'll let the minister speak for himself, but the legal advice was significant enough that that would compromise the negotiations and put the people at risk even more, and I know it was a difficult decision to risk a contempt charge as a lawyer and just hope that the resolution to the files would be coming soon, but there was unfortunately just that gap of time where the resolutions weren't coming.

**Mr. Rob Leone:** So, essentially, you were just trying to stall. Is that what I'm understanding?

**Mr. Craig MacLennan:** No.

**Mr. Rob Leone:** Or that was the minister's decision, to stall?

**Mr. Craig MacLennan:** No. I think if everything went right, we would have liked to have had the conclusion of the gas plant files reached sooner, so that you could have everything within the time that you requested it.

**Mr. Rob Leone:** So in the next course of action that the committee took, we then threw a motion together to essentially send a report back to the House with respect to the fact that we hadn't received documents that we had requested. That approach was met with significant filibuster on the part of Liberal members in the estimates committee. I'm wondering at what point in time did that Liberal strategy emerge and who decided to filibuster for almost two months on refusing to have this report going back to the House? Do you recall?

**Mr. Craig MacLennan:** Would that have been in September?

**Mr. Rob Leone:** We're talking about June, July actually.

**Mr. Craig MacLennan:** June, July?

**Mr. Rob Leone:** Yes.

**Mr. Craig MacLennan:** I stepped off to defer to the House leader's office, and my colleagues Ryan Dunn and Andrew Mitchell in the office.

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**Mr. Rob Leone:** Sorry, who?

**Mr. Craig MacLennan:** The House leader's office.

**Mr. Rob Leone:** Who in the House leader's office would have—

**The Chair (Mr. Shafiq Qaadri):** Ryan Dunn.

**Mr. Craig MacLennan:** No, Dave Phillips in the House leader's office.

**Mr. Rob Leone:** Dave Phillips? Ryan Dunn is Ministry of Energy, I believe.

**Mr. Craig MacLennan:** Yes. Parliamentary procedures are not my skill set, so I don't—

**Mr. Rob Leone:** Would the Premier's office have been involved at this time, understanding the full scope of what was about to happen? Do you know?

**Mr. Craig MacLennan:** It's my understanding that the House leader's office is a branch of the Premier's office.

**Mr. Rob Leone:** So they would have been fully engaged and immersed in this issue that was, "Should we proceed down the road of reporting back to the House as we did," and the prima facie breach would have been resolved and the Premier's office, through the House leader, would have been kept up to speed with what was going on?

**Mr. Craig MacLennan:** I can't say how well-briefed the Premier's office was by the House leader's office. I think you would want to ask them.

**Mr. Rob Leone:** At any point in time in your conversations with Minister Bentley, did he ever express to you a desire to just release all the documents so that he would avoid a contempt charge?

**Mr. Craig MacLennan:** Not to my recollection.

**Mr. Rob Leone:** He never expressed that desire?

**Mr. Craig MacLennan:** Not to me, but not to say he didn't express it to other people.

**Mr. Rob Leone:** Okay. Can you tell me what happened in your office about the summertime when this was all proceeding? You were obviously the chief of staff. In your briefings with the minister, what kinds of things were talked about with respect to what happened in committee, and who was present at these briefings? Did you talk about what happened in committee?

**Mr. Craig MacLennan:** With respect to the preparation?

**Mr. Rob Leone:** What was going on, the minister's response, prepping the minister for those meetings when he was there—essentially, what happened in the minister's office?

**Mr. Craig MacLennan:** I'll try to re-create that. In the lead-up to the estimates committee, binders were prepared, issue notes were prepared. Jesse Kulendran was brought in to prepare the estimates binders from the ministry side. I believe that the—

**Mr. Rob Leone:** Did you say that she prepared the estimates binder for the minister?

**Mr. Craig MacLennan:** Yes, sir.

**Mr. Rob Leone:** Interesting.

**Mr. Craig MacLennan:** Jesse had traditionally prepared the estimates binders for ministers in the past. I believe we weren't given much notice, so we suggested to the deputy that he bring someone in who knows what they're doing to prepare those issues notes.

**Mr. Rob Leone:** I know I don't have much time, so I'll ask one more question. Do you know if Chris Bentley ever stated to you that he was the stated fall guy for this scandal?

**Mr. Craig MacLennan:** No.



**Mr. Rob Leone:** He never expressed the desire or wish that someone else had been put in that position? He was the guy who really wanted to take the fall for the government?

**Mr. Craig MacLennan:** No, sir.

**Mr. Rob Leone:** Okay.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Leone.

Mr. Tabuns, 10 minutes.

**Mr. Peter Tabuns:** Mr. MacLennan, can you tell us when you finished your term as chief of staff to the Minister of Energy?

**Mr. Craig MacLennan:** About eight months ago.

**Mr. Peter Tabuns:** What date was that?

**Mr. Craig MacLennan:** That would have been late August.

**Mr. Peter Tabuns:** In 2012. Okay. Thank you.

You'll have an email in front of you. This is from Susan Kennedy to numerous staff in the Ontario Power Authority. Susan Kennedy is director of Corporate/Commercial Law Group. You'll see the third sentence down: "Having said that, I have been told by" the Ministry of Energy and Infrastructure "legal that the" minister's office "is dead set against any reference to costs, so we need to be prepared to deal with being told they won't do it."

This has come up in other correspondence we've seen: The bureaucrats are trying to get a directive from the minister's office acknowledging that there are costs that have to be addressed, and you won't do it. What was going on?

**Mr. Craig MacLennan:** As I think I alluded to when we first started off on this, it reads to me that we didn't know that—and looking at the timeline here—costs hadn't been finalized. So, I'm assuming this is a communications point in time?

**Mr. Peter Tabuns:** This is a process of asking the minister to issue a directive, and the minister's office, your office, being resistant to any recognition that there would be costs that would have to be addressed.

**Mr. Craig MacLennan:** I'm not sure, but I'll try and give you what I think this is in reference to. This may have been in reference to the initial negotiations on Cambridge.

**Mr. Peter Tabuns:** Yes, it could well be.

**Mr. Craig MacLennan:** And we may not have wanted to put costs in the directive, because the directive was the precursor to finalizing the negotiations, and we probably didn't want to set a number that would undermine the OPA's negotiations. Like, we wouldn't want the minister, in his directive, to say, "You've got to sign it at this NRR," because if there was a chance that they could get it lower, we wouldn't want to tie their hands that way. That's my assumption.

**Mr. Peter Tabuns:** I'll pass on that.

JoAnne Butler indicated that you and Sean Mullin were behind the \$712-million offer to TransCanada Enterprises to settle in March 2011. The OPA had already made an offer to TransCanada, which they re-

jected. In the context of the offer made by JoAnne Butler, you were effectively giving money to TransCanada worst-case scenario. Why were you doing that?

**Mr. Craig MacLennan:** Again, I believe I was screened off the file.

**Mr. Peter Tabuns:** No, you weren't.

**Mr. Craig MacLennan:** When did it occur?

**Mr. Peter Tabuns:** You were screened off at the end of April.

**Mr. Craig MacLennan:** Beginning of April.

**Mr. Peter Tabuns:** When TransCanada filed their 60-day notice that they were going to sue.

**Mr. Craig MacLennan:** Correct.

**Mr. Peter Tabuns:** The offers came before that.

**Mr. Craig MacLennan:** Then it would have been an offer signed off by the minister and the Premier. I truly don't recall it.

**Mr. Peter Tabuns:** So you had nothing to do with the \$712-million offer?

**Mr. Craig MacLennan:** I don't believe I would have come up with a number that was \$712 million. If I was on the file or actively participating on the file, what we would have asked the OPA to do was figure out a number that was within a commercially defensible range—again, maybe this is a question for the minister as well—and figure out what that number could be and was it something that could be defensible. We never directed them, to my knowledge, but if any direction was given, it wasn't me as a staffer giving it or Sean as a staffer giving it; it would have been with the knowledge of our minister or Premier.

**Mr. Peter Tabuns:** So either one of them would have directly talked to the OPA and said this is the deal you're going to offer?

**Mr. Craig MacLennan:** I don't think they would have picked the deal as much as the OPA would have picked the deal and the government would have green-lit it.

**Mr. Peter Tabuns:** As I read the documentation, the OPA made an offer and then were told, "This is where you have to go," the \$712 million, but from your testimony, you had nothing to do with that?

**Mr. Craig MacLennan:** The \$712 million sounds like a difficult number for a government to come up with. There has to be some rigour behind it that I'm assuming came from the OPA.

**Mr. Peter Tabuns:** The OPA did put that number together, but they referred to this as the government-instructed offer.

**Mr. Craig MacLennan:** Right.

**Mr. Peter Tabuns:** You're saying to us you had nothing to do with that?

**Mr. Craig MacLennan:** What I said to you was that I didn't recall having anything to do with it, because I had believed I was screened off the file, but if your timeline shows differently, then I would have been involved with the discussions on it.

**Mr. Peter Tabuns:** I'm going to go to the last question, because my guess is that my time is short. There



were no responsive documents from the minister's office when we made requests for documents, and yet I see copies of emails that you've sent to Halyna Perun. You talk about a variety of documents. You were in the minister's office. Why were there no responsive documents when this committee asked for documents from the minister's office as well as the ministry and the OPA?

**Mr. Craig MacLennan:** Sure. So I think, you know, you've hit it right there. You have many, many of my documents. By the sheer volume of documents that I get, I tend not to save emails, based on the capacity of my email account, but I know that the ministry legal counsel and the OPA does save them. I myself don't, and regularly delete emails.

1620

**Mr. Peter Tabuns:** And so, Jon Feairs, Andrew Mitchell, Chris Cheung and others all deleted their emails so that there's no paper trail? Did you ever communicate with people inside the minister's office, communications that weren't copied to the ministry?

**Mr. Craig MacLennan:** I'm not sure I understand your question.

**Mr. Peter Tabuns:** If you were to contact, say, John Feairs, send him an email—

**Mr. Craig MacLennan:** Or just walk down the hall to his office.

**Mr. Peter Tabuns:** Or do that. But a lot of people email, nonetheless. What's astounding to us is that the minister's office said, "We have no responsive documents." Jesse Kulendran here said she contacted your office; there were no documents. The minister's letter back had no reference to any minister's office documents. Are you saying that there were no documents kept in the minister's office about this matter?

**Mr. Craig MacLennan:** I'm saying to you that I didn't have any responsive documents. I regret that I didn't have any responsive documents. My colleague coordinated the search in the office. All I can speak to is what my work habit is, which is to keep a clean inbox. I always have worked that way. I don't know what my colleague's work habits are.

**Mr. Peter Tabuns:** So you archive nothing? Everything is gone?

**Mr. Craig MacLennan:** Correct. I don't know how to archive anything. I don't know what that means.

**Mr. Peter Tabuns:** So all the rest of your colleagues deleted all their emails, just as you did?

**Mr. Craig MacLennan:** I don't know. You'd have to ask them.

**Mr. Peter Tabuns:** Well, it seems that there was that habit, since everyone had no responsive documents. Were you not aware from, say, May 2012 that there would be great interest in documents and that deleting or destroying documents was something that would be problematic for this committee?

**Mr. Craig MacLennan:** I can also speak to the ministers' emails. Both ministers would email nothing. What you would get from them is a request to chat: "Hey, can you chat?" That was their work process. So I'm not

surprised that—I know the committee finds it hard to believe that Minister Duguid and Minister Bentley—

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Craig MacLennan:** —didn't have any emails—

**Mr. Peter Tabuns:** I'm not surprised by the ministers. The fact that no staff in the minister's office would have a single email that would be responsive makes no sense to me, particularly when everyone knew politically how explosive this was, how damaging it would be to withhold information. When you were asked by the committee and by the Legislature, what we were told was, it's just a blank slate, everything's gone, nothing responds. All we have left are the shadows of your emails that have been sent to other places. The central records seem to have been destroyed. How do you operate that way?

**Mr. Craig MacLennan:** It's always been my work habit to have a clean inbox. Even now, in my job, I don't deal with thousands and thousands of emails.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns.

To the government side on the final rotation of Mr. MacLennan, or Craig, as he's affectionately known to the committee. Mr. Delaney.

**Mr. Bob Delaney:** Thanks, Craig. Do you recall the wording of the motion made by the estimates committee back in May 2012?

**Mr. Craig MacLennan:** I don't recall the exact wording, no.

**Mr. Bob Delaney:** It was correspondence and it was from the Minister of Energy, the Ministry of Energy and the OPA. Is it possible that some of the documents that Mr. Tabuns spoke to you about might legitimately fall outside the scope of the document request?

**Mr. Craig MacLennan:** I searched my email box anyways.

**Mr. Bob Delaney:** Okay. That's good.

Part of the committee's job is to review the Speaker's finding of a prima facie case of privilege with respect to the production of documents by the Minister of Energy, the Ministry of Energy and the OPA. Based on your experience and perhaps your testimony this afternoon, do you have any advice or suggestions for the committee on these particular allegations that were brought to it?

**Mr. Craig MacLennan:** No.

**Mr. Bob Delaney:** Okay. So far, in your testimony, you've stated that you certainly weren't aware of a deliberate—and the word has often been used—"cover-up" of documents. You've also said that there was a solid argument for protecting solicitor-client privilege, that some of the commercially sensitive information in the documents may have prejudiced the taxpayers' best interests. Based on some of the things you've shared with the committee, do you feel that some of the allegations made against former Minister Bentley have any basis?

**Mr. Craig MacLennan:** I think Minister Bentley did what he thought was best for the people. I know it was a difficult thing and situation for him, and I respect him tremendously for putting his credibility at risk to make



sure that the documents came out when they could come out.

**Mr. Bob Delaney:** Okay. Just before we wind up, are there any closing points you want to add?

**Mr. Craig MacLennan:** No.

**Mr. Bob Delaney:** Chair, we're done. Thank you very much, Chris, for having come in.

**Mr. Steven Del Duca:** Craig.

**Mr. Bob Delaney:** I'm sorry. Craig.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney, and thanks to you—actually Craig, but there you go—for your testimony and your presence.

**Mr. Craig MacLennan:** Thank you.

**The Chair (Mr. Shafiq Qaadri):** We'll take a five- or 10-minute recess with your indulgence.

*The committee recessed from 1626 to 1638.*

#### MR. SERGE IMBROGNO

**The Chair (Mr. Shafiq Qaadri):** Colleagues, I call the committee to order.

Benvenuto, Signor Imbrogno. As you know the drill, first of all, we welcome you in your capacity as Deputy Minister of Energy and invite you to be sworn in by the Clerk.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Do you solemnly swear that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

**Mr. Serge Imbrogno:** I do.

**The Chair (Mr. Shafiq Qaadri):** Molte grazie, Signor Imbrogno. You now have five minutes for your opening address.

**Mr. Serge Imbrogno:** I want to start by thanking the committee for the opportunity to make this opening statement.

I was appointed Deputy Minister of Energy effective April 2, 2012. Prior to this, I worked at the Ontario Financing Authority as assistant deputy minister of the corporate and electricity finance division. During my time as assistant deputy minister, I was involved in issues related to the relocation of the Oakville and Mississauga gas plants, including the Keele Valley litigation between Eastern Power and Ontario Electricity Financial Corp., and negotiation of potential joint ventures between TransCanada and Ontario Power Generation. As Deputy Minister of Energy, I was involved, along with the OPA and outside legal counsel, in the implementation of the decisions to relocate the plants pertaining to Greenfield South Power Corp. and TransCanada Energy Ltd.

Shortly after I started at energy, the ministry was asked to appear before the Standing Committee on Estimates starting May 9. A committee motion was passed on May 16 that directed the minister, the ministry, and the OPA to produce all correspondence that occurred between September 1, 2010, and December 31, 2011, related to the cancellation of the Oakville power plant, and between August 1, 2011, and December 31, 2011,

related to the cancellation of the Mississauga power plant.

The ministry used a document search process similar to the process that we follow during requests for information under the Freedom of Information and Protection of Privacy Act. This search included confidential, privileged and commercially sensitive information. Policy and legal staff reviewed the documents to make sure they were within the scope of the committee's motion. The ministry invested significant human resources to collect and organize responsive documents. Part of this work was to ensure that confidential information related to other files outside the scope of the motion was not inadvertently released. This necessitated redactions in some documents.

On May 30, the Minister of Energy responded to the estimates committee motion of May 16. No documents were provided as the minister cited concern over the disclosure of confidential, privileged and commercially sensitive information. Negotiations with Greenfield for the relocation of the Mississauga plant were occurring at the time and litigation with EIG, Greenfield's financier, was ongoing. Arbitration was under way with TransCanada on the Oakville file.

As members of this committee are aware, on July 11 and September 24, the Minister of Energy wrote to the Clerk and provided documents responsive to the motion of the estimates committee. The OPA provided its responsive documents on the same dates.

The ministry and the OPA conducted independent searches. However, because we were responding to the same committee motion as well as working together to achieve the relocation of the plants, we discussed and coordinated our respective approaches to document production.

The minister's office was responsible for conducting its own search of documents in relation to the committee motion. While we were not involved in their search, I was aware that the minister's office was looking at a set of their own documents, and that shortly before the release of documents on September 24 they ultimately concluded that they did not have any responsive documents. I was also aware that prior to the September 24 release, minister's office staff reviewed copies of ministry and OPA documents.

On September 28, when it came to my attention that the ministry's initial search may have omitted some correspondence, I immediately initiated a process for a further search. This search involved a broader list of individuals, including people who were no longer with the ministry, and also used a defined list of search terms to ensure consistency.

In the search leading to the October 12 release of documents, we provided the OPA with the list of search terms we were using, and the OPA provided us with its search terms, with the expectation that we would use the same terms for consistency. Again, significant human resources were applied to this search and this work took priority over all other matters at the ministry.



In my letter of October 12 to the Clerk, I apologized to the Speaker and to the members of the Legislative Assembly for the omission of the ministry documents. As stated in that letter, the omissions from the first search were inadvertent. The ministry's effort to respond to the committee's motion was, throughout the process, undertaken in good faith. I want to re-emphasize that we took the initiative on the second document search as soon as we were aware that documents may have been missed.

Prior to the release of the documents on October 12, I was made aware of an allegation—

**The Chair (Mr. Shafiq Qaadri):** With respect, Mr. Imbrogno, I will intervene there and offer the floor to the NDP. Monsieur Tabuns?

**Mr. Peter Tabuns:** Thank you, Mr. Chair, and thank you, Mr. Imbrogno. Thank you for being here and thank you for laying out this history.

I've got a few questions on your initial statement, and then I'll go to my main questions. You note on page 3 here that, "prior to the September 24 release, minister's office staff reviewed copies of ministry and OPA documents." What were they looking for, and what was the process of review?

**Mr. Serge Imbrogno:** My understanding is, the ministry's office was interested in preparing communication documents. So initially they went to the OPA to review their documents. I think they found that process cumbersome. They asked the OPA to copy the documents, keep the originals with the OPA and then have the copied documents brought up to the ministry so they could review them.

**Mr. Peter Tabuns:** Did they not notice, as we all did, that there were obvious gaps in the documentation in the process of this review?

**Mr. Serge Imbrogno:** I can't really answer what they—

**Mr. Peter Tabuns:** Okay. You were not made aware at that point that they noticed obvious gaps?

**Mr. Serge Imbrogno:** No.

**Mr. Peter Tabuns:** You note here that on September 28, it came to your attention that documents were missing. What brought it to your attention?

**Mr. Serge Imbrogno:** On September 27, I got an email from Colin Andersen saying that he needed to talk to me urgently. I was able to call him back later that evening and he said that the OPA, in their review, believe they had missed a few former employees and also that they had missed a search term while they were inputting into the software. So at that point, I called the office of the cabinet secretary to inform them, and Colin was going to launch a review to determine if there were more documents, how much of an issue it was. I also called the Premier's office; I called David Livingston to let him know as well.

The next day, when I came into the office, I asked my staff, who were coordinating our search, to review our process to determine whether we may have missed certain individuals or if there were any issues with our document search. They reported back to me that day that

they in fact felt that we had missed certain former employees as well and that we didn't search across all people consistently with our search terms. So, at that point, I instructed staff to begin a second search.

**Mr. Peter Tabuns:** And you told the office of the cabinet secretary, David Livingston?

**Mr. Serge Imbrogno:** It would have been Peter Wallace, the cabinet secretary, and the chief of staff for the Premier was David Livingston.

**Mr. Peter Tabuns:** Okay. And did you inform the Minister of Energy?

**Mr. Serge Imbrogno:** I would have informed the chief of staff on the 27th, I believe. On the 28th, when I discovered that the ministry search needed to be restarted, I called the minister that evening, I believe, and told him.

**Mr. Peter Tabuns:** Now, I'm going to have to check Hansard, but our experience in this period was that we were challenging the government on the documents, and they were telling us regularly that we should believe the minister, that we were overreaching, that we were engaging in hysterics and in fact everything had been provided. So by the 28th, the Minister of Energy knew that there were documents missing?

**Mr. Serge Imbrogno:** I think he would have known that we were launching our second search. I don't think at that time I would have told him that we had X number of pages missing, but he would have—

**Mr. Peter Tabuns:** No, you wouldn't have known at that point—

**Mr. Serge Imbrogno:** He would have known that we were launching a second search.

**Mr. Peter Tabuns:** Okay. I'll go on to my main questions, but that gives us a picture. You were contacted by the OPA who said, "There may be a problem here." You let the Premier's office know, both bureaucracy and chief of staff, and then within 48 hours the Minister of Energy knew. Do you know of any other ministers, or the House leader, who were brought in at that point?

**Mr. Serge Imbrogno:** No, I only spoke to the Minister of Energy directly.

**Mr. Peter Tabuns:** Okay. Peter Wallace said you informed him—"There was a belief from at least one staff member in the Ontario Power Authority that there had been inappropriate direction—that there had been direction, which I then took to be inappropriate direction—associated with that..." What was the allegation that you informed Peter Wallace about?

**Mr. Serge Imbrogno:** It would have been after the release of the first set of documents. I got a call from Colin. It was after that first call that—before the release of the second set of documents. He said that the OPA noticed that we weren't following our own protocols, and I wasn't sure what he meant by that.

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I think the OPA was under the impression that our definition of correspondence was that if there was a responsive document or a term, whether it was in the correspondence or the attachment, the way we looked at



it was, both would be responsive. I think the OPA was under the impression that if the correspondence didn't have a responsive term in it, then the attachment wasn't part of a responsive document. I said that I didn't think that was the way we were doing it, and I think that's the impression they got from the meeting with Jesse. That's my understanding of what they thought was the way the ministry was doing it, but that's not, in fact, the way the ministry did it. I think, after they saw our documents when they were released, that's when Colin and I had that conversation.

**Mr. Peter Tabuns:** So it was Colin Andersen, the head of the Ontario Power Authority, who first raised this with you.

**Mr. Serge Imbrogno:** With me, yes. I believe so.

**Mr. Peter Tabuns:** Did you ever have communications with Kristin Jenkins on this matter?

**Mr. Serge Imbrogno:** No.

**Mr. Peter Tabuns:** Did you believe that something inappropriate occurred?

**Mr. Serge Imbrogno:** When Colin told me that, I talked to Jesse directly. I asked her if she had provided direction to the OPA to withhold any responsive documents. She said she did not. I talked to Colin again, and it was only Jesse and two other people in the room. I said to Colin, "Neither you nor I were in the room, so I can't say one way or the other." Then I informed the cabinet secretary's office at some point in time, just to tell him what the allegation was. My priority during that time was to finish the second search, and then we would deal with it after.

**Mr. Peter Tabuns:** Do you believe that Jesse Kulendran acted appropriately, or do you find yourself in a situation where you lack evidence one way or the other?

**Mr. Serge Imbrogno:** I have no reason to doubt Jesse. I think she was here under oath.

What I told all my staff was that when we were meeting with the OPA and there was a legal issue involved, we should make sure that legal staff were there, and if the legal staff can't make it, then we should cancel the meeting. I think a lesson was learned, for sure.

**Mr. Peter Tabuns:** Jesse Kulendran indicated she was seconded to your office. Who requested that secondment?

**Mr. Serge Imbrogno:** When estimates was launched on May 9, we were, I guess, given maybe a week or two's notice. From what I understand—I just started in April—Jesse had worked on the estimates binder previously. We needed to find someone who could move things quickly. I think the minister's office also suggested that Jesse had worked on the binder before, so it would be helpful to have her. I asked my staff as well. My EA at the time said Jesse had done a good job on the previous binder, so she seemed like the logical person to bring back.

**Mr. Peter Tabuns:** Was Jesse Kulendran doing work that in any way could be described as political?

**Mr. Serge Imbrogno:** No.

**Mr. Peter Tabuns:** One of the things that came up with a previous witness and which was puzzling to us when the documents came out last year was that there were no responsive documents whatsoever from the minister's office—not one. Not an email, not an Outlook diary entry; zero. Did you ever receive emails from the minister's staff, from the chief of staff, from issue managers, policy analysts, about these problems at Oakville and Mississauga?

**Mr. Serge Imbrogno:** I wasn't at the ministry during that time.

**Mr. Peter Tabuns:** Sorry. From the time that you became deputy minister, did the staff ever communicate to you through emails?

**Mr. Serge Imbrogno:** Yes, they did.

**Mr. Peter Tabuns:** And you became deputy minister—

**Mr. Serge Imbrogno:** April 2, 2012.

**Mr. Peter Tabuns:** They were using computers at that time and they knew how to use email. Did you find it surprising that there were no documents whatsoever from the minister's office relating to these two files?

**Mr. Serge Imbrogno:** The care and control of the ministry, the civil service side, was my domain.

**Mr. Peter Tabuns:** I understand that.

**Mr. Serge Imbrogno:** The care and control of the minister's office files and their search was their domain.

**Mr. Peter Tabuns:** I understand that.

**Mr. Serge Imbrogno:** And, you know, they would have done their search and determined they had no responsive documents, so—

**Mr. Peter Tabuns:** It's just that you've been around government for a while. You've probably dealt with a number of ministers in your time in different roles. Is it your experience that ministers' offices keep no written record of communications?

**Mr. Serge Imbrogno:** I've never worked at a minister's office. I know we have a certain retention of files, and whether they follow that protocol or not, Mr. Tabuns, I can't comment.

**Mr. Peter Tabuns:** But ministers' office staff have communicated to you in writing and by emails in the past?

**Mr. Serge Imbrogno:** Yes.

**Mr. Peter Tabuns:** Okay. It's not an unknown thing.

Have you met with the Auditor General about the Mississauga and Oakville files?

**Mr. Serge Imbrogno:** So, just a couple of things. The Auditor General's staff have met with staff within the ministry and asked us to provide them with documents, and so we provided the Auditor General's staff with those documents. I've met with the Auditor General at least once to provide comments on a draft report that he provided us, and I've talked to the auditor one or two times since then.

**Mr. Peter Tabuns:** And so he—

**Mr. Serge Imbrogno:** And, sorry, just on the Mississauga file; they had just started their review of the



Oakville files, so they were just in the process of collecting documents.

**Mr. Peter Tabuns:** Okay. I'm going to go to another issue. In the time that you were deputy minister, the agreement was signed with TransCanada Enterprises—sorry, the memorandum of understanding.

**Mr. Serge Imbrogno:** Yes.

**Mr. Peter Tabuns:** On March 19, I asked JoAnne Butler of the OPA about the gas transmission costs assumed by Ontario with regard to the agreement with TransCanada Enterprises and whether, "The government would have been aware, given that they signed the memorandum of agreement, that these costs were going to be on the government's shoulders?" Ms. Butler responded, "They knew that. That was part of the memorandum of understanding, yes."

Were you aware of those gas management and demand costs?

**Mr. Serge Imbrogno:** It is a complicated contract—

**Mr. Peter Tabuns:** I understand that.

**Mr. Serge Imbrogno:** —and there's a lot of gives and takes within the negotiation.

**Mr. Peter Tabuns:** Yes.

**Mr. Serge Imbrogno:** So it's important to know that there was an existing contract with a net revenue requirement that was built in. Within that would have been the proponents would have done the construction; they normally would do the gas management.

In the negotiations with TransCanada, because we didn't know what the gas management costs would be at the new site, part of the negotiation was to pull out what we thought the cost would be from the existing contract and have it pass through from the OPA. So the negotiating strategy was to remove it from the existing contract, have it pass through in a new contract, and a net revenue requirement would be reduced. We didn't know what the exact costs were in the new site. We tried to, as best we could, remove it from the NRR.

So, yes, we knew at the time that the gas management costs would be a pass-through to the OPA.

**Mr. Peter Tabuns:** Okay. So you understood that there were going to be costs involved with this new site that Ontario would be taking on that were in addition to the sunk costs that we were going to have to reimburse TransCanada for. Is that correct?

**Mr. Serge Imbrogno:** The \$40 million was our estimate of the termination at the time, what the sunk costs were that would be paid for by the Consolidated Revenue Fund. We knew that there would be other costs and benefits of relocating to a new site and those would be part of the obligation of the ratepayer.

**Mr. Peter Tabuns:** So in fact, you knew at that point that the cost to Ontario was going to be more than \$40 million.

**Mr. Serge Imbrogno:** Well, we knew there would be other costs in the system, other benefits as well, but we quantified that \$40 million as the responsibility of the taxpayer.

**Mr. Peter Tabuns:** Did you inform the minister that there were other costs that were going to come to be borne by the people of Ontario?

**Mr. Serge Imbrogno:** We did the best job we could to go through the contract and provide that information.

**Mr. Peter Tabuns:** So the minister would have understood that there is \$40 million at the core but there were other costs that were going to make themselves apparent. In fact, JoAnne Butler, if I remember correctly, quoted a net present value of somewhere in the \$300-million to \$400-million range. Is that a figure that you were familiar with?

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**Mr. Serge Imbrogno:** Not at the time. We didn't know what the estimate would be at the new site. Just to be clear, Mr. Tabuns, there are other costs, but there are other benefits as well that would need to be taken into account on the ratepayer side.

**Mr. Peter Tabuns:** Right. So there was the cost of the \$221 million for the turbines; that was another cost that Ontario was going to take.

**Mr. Serge Imbrogno:** That's correct.

**Mr. Peter Tabuns:** And there would be costs for transmission connection, which I haven't seen a quantification for yet. The benefit side would be the reduction in the monthly payment?

**Mr. Serge Imbrogno:** That's correct, and also pushing out the time. The initial contract would have come in at a time when we had enough capacity; we don't really need the power, so we would have been making a monthly payment of that \$17,227 per month per megawatt to TransCanada for power that we didn't need. By pushing it off to 2018, we would include that as savings as well.

**Mr. Peter Tabuns:** So the minister knew there were more costs to come?

**Mr. Serge Imbrogno:** I think the minister knew—I believe—that the \$40 million was the sunk costs paid for by the taxpayer, and there were other costs and benefits to the system that would be through the rate base.

**Mr. Peter Tabuns:** I've noticed, as I've gone back through Hansard, how very careful the minister and ministers have been, because they never talk about the total cost. They only talk about those sunk costs. They don't talk about the gas management cost. I'm assuming that it was made very clear to them that there was more to this package than the sunk costs.

**Mr. Serge Imbrogno:** I think as part of the total system costs and benefits, but at the time, we didn't have that number that JoAnne Butler provided the committee. We knew there would be a cost; we didn't know what it was. But we took out the equivalent of the existing contract.

**Mr. Peter Tabuns:** When did you know what the cost was going to be?

**Mr. Serge Imbrogno:** Of that particular item?

**Mr. Peter Tabuns:** Yes.

**Mr. Serge Imbrogno:** I don't think that's finalized. I think that's their best guess at this point. It will be finalized when all the engineering studies come in.



**Mr. Peter Tabuns:** When was that estimate made?

**Mr. Serge Imbrogno:** I'd have to go back. It wasn't the day of or the day after, but sometime after.

**Mr. Peter Tabuns:** Within a month?

**Mr. Serge Imbrogno:** Let me get back to you, because I don't want to put out an estimate.

**Mr. Peter Tabuns:** So, if, Mr. Chair, you could just note that we'd like the figures back from Mr. Imbrogno on that, that would be great.

**The Chair (Mr. Shafiq Qaadri):** Yes, Mr. Tabuns. Noted.

**Mr. Peter Tabuns:** We've had real difficulty finding anyone who is actually responsible for all this. My colleagues can speak to that. Who did you see as being responsible for carriage of the Oakville file through the process of deciding to cancel and wrapping it up?

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Serge Imbrogno:** I think part of my answer will be that I've had two lives, one as assistant deputy minister. I would have worked alongside of Infrastructure Ontario and David Livingston on parts of the arbitration, with OPG and Infrastructure Ontario on trying to find joint ventures. Then I would have worked at the ministry trying to negotiate a relocation. All those different engagements—there were different leads on it. The arbitration, I believe, was an Infrastructure Ontario/David Livingston lead. When I was at the ministry, the relocation and renegotiating—the negotiating team would have been made up of Infrastructure Ontario, OPA and Energy, with our outside legal counsel.

**Mr. Peter Tabuns:** Sorry, who would be the persons? When you say "Infrastructure Ontario and Energy," who would be the persons who would represent those bodies?

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns. I need to intervene there.

**Mr. Peter Tabuns:** I'll be back.

**The Chair (Mr. Shafiq Qaadri):** Famous words; we appreciate that.

Signor Del Duca, 20 minutes.

**Mr. Steven Del Duca:** Thanks very much, Mr. Chair. Thank you, Mr. Imbrogno, for being with us here today.

**Mr. John Yakabuski:** Could you turn that up?

**Mr. Steven Del Duca:** I don't know. Can we? Can you hear me?

**Mr. Victor Fedeli:** He's being sarcastic.

**The Chair (Mr. Shafiq Qaadri):** He'd like you to mimic himself.

**Mr. Steven Del Duca:** The last time, I was too quiet for Hazel; that's why.

Now that everyone can hear me clearly, I want to talk a little bit about the document-request motion and the nature of the commercially sensitive negotiations around this. Specifically, about the motion that was passed in estimates in May 2012 for all the correspondences you mentioned—from the Minister of Energy, the Ministry of Energy and the OPA—related to the Mississauga and Oakville gas plants and within a specific date range: At the time that the request was made by that committee,

were negotiations ongoing with TransCanada and Eastern Power?

**Mr. Serge Imbrogno:** With TransCanada, we were in an arbitration process that was under way. With Greenfield we were in litigation with EIG. EIG had sued the province; EIG was suing Greenfield. OPA had identified Greenfield so OPA was also liable as well. The negotiations with Greenfield had begun on the relocation of the plant.

**Mr. Steven Del Duca:** So would you describe the negotiations and the process that was under way as commercially sensitive?

**Mr. Serge Imbrogno:** Yes, extremely.

**Mr. Steven Del Duca:** So you would say that the risks would have been significant if the commercially sensitive details had been made public before the deals were finalized?

**Mr. Serge Imbrogno:** Yes, and I think if the information potentially could be used by the other parties against us as we're trying to negotiate a deal with them—so it would have been information that, if it was in the public domain, could have been problematic.

**Mr. Steven Del Duca:** Given your experience and your expertise, could you try to quantify the risks for us? I mean, what would it mean for taxpayers if the OPA and the province's negotiating position was prejudiced because the company had access to confidential and privileged information? Can you give us a sense? Can you ballpark that?

**Mr. Serge Imbrogno:** It's hard to ballpark it, but we were being sued by EIG for I think \$300 million. So, to the extent that they were able to get information that may have made their case stronger could have put us at risk there. Again, negotiating with Greenfield, if they had information that they could have used to increase their leverage in negotiations, then they could have used that. So, it's hard to quantify, but they're fairly large risks to both the taxpayer and the ratepayer.

**Mr. Steven Del Duca:** Okay, thank you. I want to move on a little bit to the Ministry of Energy document search. I know you did address this a little bit in your opening statement, but in terms of the scope of the request in itself, in your experience have you seen a request of that kind of magnitude from a committee?

**Mr. Serge Imbrogno:** I think the whole request from the public accounts committee was new to the ministry, so we needed to take some time to understand the scope of the request and the requirements of the committee. We needed to understand how to search for that particular motion. We were also concerned about providing records that weren't responsive, so there was a lot of time and effort to work things out. I think the scale of it was probably not the usual for the ministry, with our usual FOI requests. The time frame as well would have been initially challenging as well.

**Mr. Steven Del Duca:** Okay. So, given that over 56,000 responsive records were ultimately produced in respect of that request, what kind of challenges would that kind of undertaking present for the OPS and for the



OPA? The kind of resources that would go into responding to such a request—can you give us a sense or elaborate on that a bit?

**Mr. Serge Imbrogno:** Yes, I would say as part of our second search we devoted significant resources. We basically shut the ministry down for that search period. I think part of our challenge was that we already had a set of documents that were released and we were searching on another set of documents. We didn't want to frustrate the committee by just putting out documents that were repetitive, so we took a lot of time to go through to make sure that what we were putting out was incrementally new. Because the second search was more broad, we captured a lot of information that was non-responsive. So a lot of the time and effort was spent with policy legal staff going through and determining what is responsive and what is non-responsive. We spent a lot of time with policy legal staff. Every time we made a redaction we had people sign off and made sure that they were comfortable with it. So that took a lot of time and effort, but the ministry basically worked 24/7, and that was the priority for the ministry.

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**Mr. Steven Del Duca:** Okay. On September 24, 2012, thousands of documents were provided to the committee in response to the motion. In his letter to the Clerk accompanying these documents, the then Minister of Energy, Chris Bentley, stated, "I've been advised by ministry staff that the documents attached to the letter comprise all documents responsive to the committee's request, regardless of privilege or confidentiality."

I'm just wondering: Can you confirm that at that time you believed, and Minister Bentley was told, that all responsive records had been tabled?

**Mr. Serge Imbrogno:** I think the ministry at that point had done a good-faith effort to search for the documents and provide all the responsive documents. That information would have been made available to the minister.

**Mr. Steven Del Duca:** Okay. Additional documents were tabled—this came up in your opening statement as well—by the ministry on October 12, 2012, and in your letter to the Clerk, you wrote, "No responsive information or documents were deliberately withheld from the September 24 package."

You've heard a bit of it, I'm sure, in the run-up to today and even today. The opposition alleges that more documents were turned over because of, as they say, as they allege in their words, a cover-up. But in your letter, you say that the ministry's search for documents was conducted in good faith, with every intention to comply with the committee's motion. Do you still stand by your statement?

**Mr. Serge Imbrogno:** Yes. The ministry made a good-faith effort on the release of the documents on September 24. When we realized that we may have inadvertently missed documents, we immediately launched a second search on the 28th. There was no delay in our launching that second search to make sure that all the

correspondence that we inadvertently left out was provided to the committee. In my second letter in October, like I say, we made that exhaustive effort to ensure that all the responsive documents were provided.

**Mr. Steven Del Duca:** Okay. Moving away from the Ministry of Energy documents search, I want to talk a little bit about the OPA's document search. I know that you've heard this as well—at least, I'm assuming that you've heard this as well. Accusations have been made that the ministry interfered with the OPA's document search, and in particular there's an internal OPA memo that has been widely circulating, alleging that Jesse Kulendran—a ministry employee, as you know—had directed OPA staff to withhold documents. I'm pretty sure you know that Ms. Kulendran appeared before this committee last Thursday, and I wanted to read you a quote from her testimony. This is the quote: "I did not direct the Ontario Power Authority to exclude documents. I do not have the authority to direct the Ontario Power Authority to exclude documents."

"The conversation on August 22 was about sharing observations that had been made through the minister's office's review of the documents, but it was not to provide any direction."

From the standpoint of seeking clarification, I want to know if you can confirm or stand by Ms. Kulendran's comments that she was not sent over to the OPA to tell them to exclude documents, nor did she, frankly, have the authority to provide the OPA with that sort of direction.

**Mr. Serge Imbrogno:** Just a couple of things on that: I never directed Jesse to go to the OPA and ask them to exclude documents. I never myself directed the OPA to exclude any documents. When I talked to Jesse about the allegations, she told me what she said to the committee: that she did not direct the OPA. I have no reason to not believe what Jesse has told the committee.

**Mr. Steven Del Duca:** But would she have had the authority, essentially, to give that kind of direction to the OPA? I'm just curious.

**Mr. Serge Imbrogno:** No. She was in a capacity of coordinating. She wasn't in a capacity of making a decision or providing anyone with direction.

**Mr. Steven Del Duca:** Right. Great. Again, as Ms. Kulendran testified, she provided the OPA with some ideas for additional search terms that they should be using to identify responsive records. She said that it looked like they had missed terms like "Oakville" and "Oakville generating station." Based on her testimony, then, it would appear that in fact she was actually trying to be helpful to ensure that the committee received all of the records that it was entitled to. Is that your sense of it as well, that it was helpfulness on her part?

**Mr. Serge Imbrogno:** I think our interaction with the OPA during the document search was to share with them what we were doing, to share as much as we knew about timing and when documents would be released. It was more of a sharing of information. So that seems to be consistent.



**Mr. Steven Del Duca:** In his letter to the Clerk on October 12, 2012, Colin Andersen, CEO of the OPA, stated, “It was always our intention to provide all responsive records and to respect the ruling of the Speaker....” To the best of your knowledge, has the OPA acted in good faith in response to the document production motion?

**Mr. Serge Imbrogno:** I have no reason not to believe Colin. I believe they acted in good faith. I haven’t seen anything to think otherwise.

**Mr. Steven Del Duca:** Do you think this entire process around the document search has been a bit of a learning process for those involved—for government, for those involved in this process?

**Mr. Serge Imbrogno:** I can speak for the Ministry of Energy. It’s definitely been a learning experience in terms of conducting a document search. I think we’ve learned from the second search that scoping out the process upfront would be better. If we were to do it again, I think a discussion with the committee outlining, “Here’s what we’re doing. Here’s the process we’re following. Here’s whose we’re searching. Here are the terms,” to make sure that the committee is onside with that—in terms of the document search, I think that’s one of our lessons learned.

**Mr. Steven Del Duca:** So, given that you’ve talked about how the ministry acted in good faith and you’re not in a position to not take others at their word, like Ms. Kulendran and others from the OPA, if any mistakes at all were made in this process, would you ascribe those mistakes to, perhaps, the sheer volume of the request or the shortness of the time frame? How would you—

**Mr. Serge Imbrogno:** Yes. I think part of the challenge was, we were—both the OPA and the ministry—doing many important things at the same time. Both Colin and I were engaged in discussions with Greenfield and TransCanada, trying to negotiate and land a contract in the best interests of the ratepayer and the taxpayer. At the same time, we were doing the regular work of the ministry and the OPA, and at the same time we were trying to respond to the committee request. I think all those things—a part of the problem was that we were probably stretched a bit. We tried to respond as best we could, in good faith, but there were challenges with everything that was going on with the ministry at the same time and the OPA.

**Mr. Steven Del Duca:** Okay, thank you.

I’d like to talk a little bit about the idea or the concept of the redactions. The opposition has been alleging that redactions are part of—as they say, again—some sort of cover-up, but in your October 12 letter to the Clerk, you did write, “The only redactions in the September 24 disclosure package and the documents attached to this letter pertain to information unrelated to the cancellation of the Mississauga or Oakville power plants that is unresponsive to the May 16 motion of the committee.” Just to clarify, do you stand by this particular statement, that only non-responsive material was redacted?

**Mr. Serge Imbrogno:** We had the committee motion. We had a date frame. We had a request related to the

Oakville-Mississauga cancellation, and it asked for correspondence. We reviewed that with policy legal to say, “Using our judgment, what falls within that ask?” and we did our best to only redact things that were outside of it.

I understand that the cabinet secretary has provided the committee with all our redactions, so that’s available for the committee to look at, and I think that will help you see in what cases we did redact things. I can think of examples where we have 10 items to brief the minister on; maybe one item was related to the gas plants and the other nine were related to other topics. In that case, the other nine would have been redacted, but that’s an example of the judgment we used.

**Mr. Steven Del Duca:** Thank you. I just have a couple of questions with respect to the Oakville relocation costs. We’re all aware that the Auditor General is currently looking into this and, I believe, is providing a report at some time in the near future, but I’m hoping you can clarify a couple of points for the committee.

*Interjection.*

**Mr. Steven Del Duca:** But I believe there’s also one forthcoming with respect to Oakville, last time I checked—

*Interjection.*

**Mr. Steven Del Duca:**—but thank you for your intervention.

Firstly, there is a question of transmission upgrades in the southwest GTA. In her testimony to this committee, JoAnne Butler from the OPA confirmed that transmission upgrades are needed in the southwestern GTA, with or without a new plant in the region. I’m just wondering: Do you agree with Ms. Butler’s assessment?

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**Mr. Serge Imbrogno:** My understanding is, by locating the Oakville and Mississauga gas plants where they were, that it allowed the OPA and the IESO to push out the date that you would have needed transmission upgrades. I think it would have gone from 2019 out to 2029. When the decision was made to move those plants to another location, it would have brought back that date, from 2029 back to I think 2018. I think that would be something to factor in.

**Mr. Steven Del Duca:** I also want to ask you about the gas management and turbine costs. In a backgrounder on the Oakville deal circulated on September 24, 2012, the OPA states that they assumed costs associated with the gas turbines as well as the gas management costs in exchange for a lower price for power that they were able to negotiate at the Lennox site. This would result in real savings from \$17,277 per megawatt per month to \$15,200 or thereabouts.

In terms of this particular deal with TransCanada, would you agree that it’s important to look not only at the costs but also at the savings that were negotiated on behalf of Ontario ratepayers for a lower price for power?

**Mr. Serge Imbrogno:** That was the real negotiation with TransCanada. We had a competitively bid procurement that yielded a net revenue requirement of \$17,227.



Part of the discussion, the negotiation with TransCanada, was, as we pulled out the costs of the turbines and we removed the gas management costs, what was the appropriate reduction in the net revenue requirement?

**Mr. Steven Del Duca:** How much time, Mr. Chair?

**The Chair (Mr. Shafiq Qaadri):** It's 2.5 minutes.

**Mr. Steven Del Duca:** Thank you. Just really quickly, regarding campaign commitments and transition planning: During an election writ period, my understanding is that the OPS engages in a process of preparing for the incoming government, regardless of partisan stripe. Is that true?

**Mr. Serge Imbrogno:** I believe that's correct, yes.

**Mr. Steven Del Duca:** So I assume that the OPS would also be keeping an eye on the various campaigns and the commitments that were being made in the course of the election campaign in order to prepare in the best, most responsible way possible. But regardless of who wins the election, the OPS is then tasked with helping whatever party wins power to implement their campaign commitments. Is that correct?

**Mr. Serge Imbrogno:** Yes, that's correct.

**Mr. Steven Del Duca:** So there is nothing unusual about a process whereby a political party makes a commitment during an election campaign, and then that commitment is implemented by that party with the help of the OPS once elected, once in government—nothing unusual about that?

**Mr. Serge Imbrogno:** No, I don't see that as unusual.

**Mr. Steven Del Duca:** Okay, great. I think I'll end there, Mr. Chair.

**The Chair (Mr. Shafiq Qaadri):** Thank you. The government yields its time?

*Interjection.*

**The Chair (Mr. Shafiq Qaadri):** Fair enough. To the Conservative side: Mr. Fedeli.

**Mr. Victor Fedeli:** Thank you very much, Chair. Good afternoon, Mr. Imbrogno.

**Mr. Serge Imbrogno:** Good afternoon.

**Mr. Victor Fedeli:** Hang on one second.

*Interjections.*

**Mr. Victor Fedeli:** In your original opening statement—I too wanted to just ask a question about that, if I can locate it. You finished early, Mr. Del Duca. There we go. Thank you.

In your opening statement, you talked about the fact that on May 30, no documents were provided, as the minister cited concerns over the disclosure of confidential, privileged, and commercially sensitive information. Eventually, 56,000 documents were released. Are they all confidential, privileged and commercially sensitive?

**Mr. Serge Imbrogno:** I think at the time that was our best assessment.

**Mr. Victor Fedeli:** That there would be 56,000 commercially sensitive documents and no general documents?

**Mr. Serge Imbrogno:** I can't talk for the OPA. When we did our initial search, the relocation of the gas plants wasn't a ministry-wide initiative. It was very focused in

certain divisions, and certain people within those divisions worked on it. So our initial search would have been very focused, and my sense is it picked up most of the things that were confidential, solicitor-client-privileged.

**Mr. Victor Fedeli:** There's a note here that eventually the Minister of Energy wrote to the Clerk and provided documents, followed by the OPA providing documents. So are you saying that the ministry turned documents over to the Clerk?

**Mr. Serge Imbrogno:** Sorry, on which—

**Mr. Victor Fedeli:** Eventually. How did the Clerk get the documents that you're referring to? Did the ministry turn documents over to the Clerk?

**Mr. Serge Imbrogno:** The minister made his statement on the 30th, that we weren't releasing documents. Then the minister, on the 24th, wrote the letter to the Clerk.

**Mr. Victor Fedeli:** And what? Provided documents?

**Mr. Serge Imbrogno:** And provided documents.

**Mr. Victor Fedeli:** So the minister provided the documents to the Clerk.

**Mr. Serge Imbrogno:** I think physically, ministry staff would have delivered them, but I would say yes, the minister—

**Mr. Victor Fedeli:** Did the OPA also provide their documents to the Clerk or to the ministry to give to the Clerk?

**Mr. Serge Imbrogno:** The OPA provided their documents to the Clerk.

**Mr. Victor Fedeli:** Okay. So each of you provided documents to the Clerk.

On September 28, when it came to your attention that there was a further search that was needed, did you then add words like "Apple," "Banana," "Fruit Salad"? Were those words added in this particular search?

**Mr. Serge Imbrogno:** Just so I can answer your question—you have to understand, on the first search we provided staff with the committee motion and direction to search correspondence that included emails and attachments. We didn't give people specific search terms. In the second search, one of the issues—we realized that some people would have searched on Project Vapour, Vapour-lock; other people didn't. So in the second search, we decided, "Let's have a list of search terms that everyone can agree to." We shared our list with the OPA; they shared their list with us. From that—

**Mr. Victor Fedeli:** So there was a document that said, "Here are the search terms?"

**Mr. Serge Imbrogno:** Yes.

**Mr. Victor Fedeli:** Do we have that document?

**Mr. Serge Imbrogno:** I could provide that document.

**Mr. Victor Fedeli:** Okay. You'll undertake to have that document of the search terms.

On or around October 12, there was a third document delivery from the OPA. In that discussion, they talked about what took so long: "We had to take out privileged documents." That leads me to believe that there are still more documents coming, and I know that's a question I



will ask them. But in your opinion, then, after listening—I'm sure you did listen to that hour-long press conference that the OPA held, making a presumption I shouldn't. But when they state that there are privileged documents that were removed, does that imply there are still missing documents?

**Mr. Serge Imbrogno:** Sorry, Mr. Fedeli, I'm losing track of what—are you saying the OPA is saying they had—

**Mr. Victor Fedeli:** They had a one-hour press conference on the third document dump.

**Mr. Serge Imbrogno:** Right. So that would have been their February 21 or 22 release; I think the 22nd. My understanding is, the OPA has provided all documents.

**Mr. Victor Fedeli:** In that conversation, the CEO, the chair, the president—I can't recall which one—said, "What took so long was, we had to pull out the privileged documents." Would that lead you to believe there are still more documents that have not been turned over?

**Mr. Serge Imbrogno:** Just my understanding of my discussions with Colin is that when he alerted me to the fact that they may have forgotten a search term—I said we had agreed to a set of search terms—it sounded like they realized after the October 10 release—I think I got a call from Colin on October 18 saying that they may have inadvertently forgotten to put a search term in their software. Colin said that there were potential documents that he wasn't sure—they're doing a view now and they're also going to review whether there are any incrementally new documents. I think that's what took the time.

**Mr. Victor Fedeli:** Okay. We'll leave that question for the OPA, then.

Basically what I said earlier is, we're here to determine how much this gas plant cancellation cost, both for Oakville and Mississauga, and who ordered the cover-up. Why I say "cover-up" is because here we are, months later, and there are not two people in this room who could tell us how much it cost. That fact is still being covered up, so I am very free to continue calling this—as offensive as it may sound to you, there's a cover-up here because we still, to this minute, do not know how much the government spent on this scandal. So let's try to get to some of these numbers.

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I know that you weren't at the Ministry of Energy at this particular time, but your name, of course, Serge, is all over the documents from the finance side. Do you know about the \$712-million offer?

**Mr. Serge Imbrogno:** No.

**Mr. Victor Fedeli:** You don't know about that offer?

**Mr. Serge Imbrogno:** No.

**Mr. Victor Fedeli:** So it wasn't sent over to finance to approve. This is a number that somebody else has come up with that you're not familiar with.

**Mr. Serge Imbrogno:** I wasn't aware of that, but I can explain, when I was involved, the numbers that I did see.

**Mr. Victor Fedeli:** Please.

**Mr. Serge Imbrogno:** It would be an approximation of the sum costs. It would have been an approximation of the cost of the turbines and then it would have been an assessment of what the potential lost profits were over time.

**Mr. Victor Fedeli:** We'll get to those ones, then. You're a pretty senior guy at finance at the time, involved in this. Would you agree your name is in hundreds upon hundreds of these documents, both from finance and from energy?

**Mr. Serge Imbrogno:** Yes.

**Mr. Victor Fedeli:** So you do not know about a \$712-million offer either?

**Mr. Serge Imbrogno:** Not of an offer, but I'm aware when you add those up you could get close to \$700 million.

**Mr. Victor Fedeli:** No, it comes in more than that number.

**Mr. Serge Imbrogno:** But, just so I can clarify, in the lost profit, that would be a negotiation between TransCanada and the OPA, so—

**Mr. Victor Fedeli:** I fully understand that. I'm asking specifically about the \$712-million offer that was made to TransCanada that was rejected. This would have been on April 21 of that year, so that's not an area—

**Mr. Serge Imbrogno:** I don't recall that, but there were a lot of numbers out there and they may come close to that number, but I'm giving you a sense of what I understood at the time.

**Mr. Victor Fedeli:** Okay. I'm not going to walk you through all these documents; we'll talk about those later. The transmission at \$200 million, the turbines at \$210 million, the gas delivery and management at \$313 million to \$476 million, and the sunk cost of \$40 million add up to around \$929 million if you take the high end—\$800 million if you take the low end.

I want to direct your attention to PC doc number 2. This is way over my head. This is the southwest GTA gas-fired procurement; this is from you to the gang and it is very, very detailed.

It says: "TCE has been seeking recovery of ... out-of-pocket expenses (\$37 million)"—it came in at \$40 million, so we're pretty accurate there—"the cost of turbines for the project (\$210 million)"—nobody has disputed that number—"and its estimated financial value of OGS," the Oakville generating station.

Then we get into their estimate of OGS, and they put the value at \$503 million. That's before the \$210 million and before the \$40 million. They get into discount rates of 5.25%, this kind of thing.

If you go to the next page, you write:

"Consistency with previous estimates:

"While very preliminary analysis, the \$503 million and the \$385 million"—which is something else—"provided by TCE can be reasonably approximated using the net after-tax cash flow values in the spreadsheet," and then you get into a discount rate of five and a quarter. You came up with a number of \$504 million using that



discount rate; smaller numbers, if you use a different discount rate and a different term.

Are you telling us here that the value that TransCanada will be seeking is basically \$503 million plus \$210 million plus \$37 million at that time? Is that kind of where their starting point was back in December 2011?

**Mr. Serge Imbrogno:** I'm just trying to—

**Mr. Victor Fedeli:** I know it's being thrown at you.

**Mr. Serge Imbrogno:** The context of it, I think, is important.

**Mr. Victor Fedeli:** You prepared this document, I presume, or had it prepared. This is a document you originated. You're sending this.

You say:

"Hi,

"Attached are our initial comments on the TCE model.  
"Serge."

It's strictly confidential and commercially sensitive. Is that where we are? Were we in the \$750-ish-million—

**Mr. Serge Imbrogno:** Just to give you the context for this as I go through it, this would have been part of the arbitration process with TransCanada. I believe they provided the OPA with pro forma statements. We didn't have the actual TransCanada model. What the OPA did, just going by memory, was I think they created their own financial model. They would have used the assumptions that they thought TransCanada was using. They then shared the model with the Ontario Financing Authority. We would have gone through that pro forma model and provided these comments.

**Mr. Victor Fedeli:** So your numbers came in fairly close to the numbers of TransCanada?

**Mr. Serge Imbrogno:** Using their assumptions, I think, and not really—

**Mr. Victor Fedeli:** Nobody's arguing with that number here. Nobody says—in fact, the comment is they can be reasonably approximated using the net after cash. Nobody in here says, "Wow, these are way out of line." I don't see that comment anywhere in here.

**Mr. Serge Imbrogno:** Based on the pro forma statements that TransCanada provided. I think we're commenting on the model; I don't think we're commenting on whether that was appropriate or not.

**Mr. Victor Fedeli:** So that's kind of the area that we're in.

Let me just jump to a little bit of the discussion from JoAnne Butler the other day. We're talking about this gas delivery, the fact that it dropped from \$17,000 and change down to \$15,000 and change. My comment on that: I asked her, "What is the contract today?" She said it was \$7,900 today, and I asked her, "What's the average NRR out there?" And it was, I'm going to guess at that number, \$12,700 or so, the average NRR. So basically we're trying to talk about a savings of NRR by having this \$17,000 drop to \$15,000, when in reality, under sworn oath, the average is \$12,000 and change, and today it's \$7,900. Show me how that can possibly be any savings. I mean, I understand savings from \$17,000 to \$15,000 if you make up the \$17,000 as a high number to start with.

**Mr. Serge Imbrogno:** The \$17,200 number was the last competitively procured gas plant. That would be the benchmark that seems appropriate to use. I think the average would take into account plants that were signed several years ago, so I think when you average it out, it might drop down. But I think part of it is the OPA's judgment about what they think, today, if you were to build the plant using this, is probably closer to the reality, given it was a competitive procurement.

**Mr. Victor Fedeli:** Earlier in one of your comments, you had said there's a lot of give and take in this industry. To me it appears—so far we've seen a lot of the give on the government's part and a lot of the take on the proponent's part.

I want to jump to this document that you have. It says "PC doc #2"; it was a news release that I had sent out. That's only the fancy part; it's the meat behind it. We're skipping over to Mississauga here now. This has been itching at me for quite some months since we first discovered this one and talked about it. This is this \$5-million side deal.

I'm going to just read you what I say in here. I say this in my news release, but it's backed up here in all the attachments. "OPA's JoAnne Butler asks lawyer Rocco Sebastiano specifically: 'Can you confirm that you have run by Carl the concept of the 10 mil upfront and the other five thru the NUG?' Sebastiano replies 'Yes I have.' He further states they were 'pushed for an upfront payment on the assignment of the contract to the OPA,' but 'we would have a problem accounting for an upfront payment.'"

Then they ask, "Is this NUG needed for the system?" They reply, "The NUG is not needed."

We understand the first announcement came out at \$180 million for Mississauga. Then we see the concept of the \$10 million upfront. That's the \$10 million that the finance minister told the energy minister to add because there was a \$10-million upfront payment. That changed it to \$190 million. Why is the other \$5 million through the NUG not in this Mississauga disclosure? Why hold back that \$5-million disclosure?

**Mr. Serge Imbrogno:** It is a bit of a complicated story because—

**Mr. Victor Fedeli:** It's a story.

**Mr. Serge Imbrogno:** It involves litigation that was ongoing with Ontario Electricity Financial Corp. for many years. That litigation came up at the same time that the situation with Mississauga was happening.

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I think there is a number of numbers to follow. The OPA had made a \$10-million payment to Greenfield related to the potential renegotiation with Keele Valley; I think part of that was \$5 million—if they negotiate on Keele Valley and they don't agree on terms, then Eastern Power would keep the \$5 million.

**Mr. Victor Fedeli:** So why wasn't that \$5 million reported?

**Mr. Serge Imbrogno:** Sorry; let me just finish. But also, the \$4.6 million—I think it was like \$5.6 million—



\$4.4 million—once the OEFC settled with Keele Valley, then they would pay back the \$4.6 million. In the discussions between OEFC and Eastern Power, it was, I think, decided that OEFC would settle for \$10 million, so once OEFC made that \$10-million payment, \$4.6 million went back to OPA.

**Mr. Victor Fedeli:** So it says, “Can you confirm that you have run by Carl the concept of the 10 mil upfront and the other five thru the NUG?” You’re saying today now there is no other \$5 million that is in the hands of the proponent?

**Mr. Serge Imbrogno:** The proponent would have had the \$10 million from OEFC and I think \$5.4 million—

**Mr. Victor Fedeli:** —\$5.23 million—

**Mr. Serge Imbrogno:** —from the OPA for that negotiation of the Keele Valley contract that didn’t go through.

**Mr. Victor Fedeli:** Very complicated, as you say. We’ll look forward to how the auditor deals with that one.

In closing, I would ask you: Who had the final say or authorized the costs on both Oakville and Mississauga? Who would have had the final say? Who signed off on these numbers?

**Mr. Serge Imbrogno:** We had a negotiating team, I think I mentioned, that it included the OPA—

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Serge Imbrogno:** —IO. The ministry was there. We would have brought forward to the treasury board what we thought the sunk costs were for the site, and that would have been paid through the Consolidated—

**Mr. Victor Fedeli:** But the MOU says that the government signed off on the MOU. The letter from JoAnne Butler also says that a memorandum of understanding was made public. There’s the \$40-million cost—“this included the extra costs to get gas”—she says there were other costs in the relocation in addition to the \$40 million, and that the government signed off on the MOU.

**Mr. Serge Imbrogno:** The MOU was an agreement in principle that would lead to definitive agreements that were signed on December 14, but the OPA board would have signed off on behalf of the ratepayer to say that the renegotiated—

**Mr. Victor Fedeli:** Did the minister know the full cost, the more-than-\$40-million full cost?

**Mr. Serge Imbrogno:** We would have informed the minister of all of the components of those costs.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli.

To Mr. Tabuns, 10 minutes.

**Mr. Peter Tabuns:** Mr. Imbrogno, I’m just going to go back to an earlier question about documents. You noted, and we discussed, that the minister’s office staff reviewed copies of ministry and OPA documents.

**Mr. Serge Imbrogno:** That’s correct.

**Mr. Peter Tabuns:** Who in the minister’s office did that review?

**Mr. Serge Imbrogno:** I know Ryan Dunn would have gone to the OPA to review the documents. I believe it

was Ryan Dunn in the minister’s office that would have reviewed the OPA documents at the ministry.

**Mr. Peter Tabuns:** And he reviewed the ministry’s documents as well?

**Mr. Serge Imbrogno:** Yes, as we compiled the documents, he would have reviewed those as well.

**Mr. Peter Tabuns:** Okay, so he was the key person in the minister’s office that would oversee this document review before they were released?

**Mr. Serge Imbrogno:** Well, we had a point person on the ministry side dealing with a point person on the minister’s side.

**Mr. Peter Tabuns:** And the point person on the ministry side was?

**Mr. Serge Imbrogno:** For part of it, it would have been Jesse dealing with the Clerk, coordinating within the ministry and getting any information from Ryan, and I would deal with Ryan directly, as well, if we got information about discussions between the government House leader’s office when documents would be released, that kind of thing, but Ryan was the point person from the minister’s office that all of the information would have flowed through.

**Mr. Peter Tabuns:** Okay. Just going back to a question that—Chair, you’ve changed.

**The Vice-Chair (Mrs. Laura Albanese):** I’ve changed—

**Mr. Peter Tabuns:** The question that I was trying to go through with you before I ran out of time: When we’ve had numerous people before us, no one seems to have been in charge. Was there a person in the Premier’s office or in the minister’s office who had carriage of the Oakville file—the person whom others would go to with questions, with clarifications, who would be driving the resolution from the government end?

**Mr. Serge Imbrogno:** I’ll just give a bit of how we set up the negotiating team. At the table, on the Oakville file, would have been Colin Andersen; Bert Clark from Infrastructure Ontario; we would have had a ministry legal person there as well—staff person; and we’d have had outside counsel representing the OPA, and outside counsel representing IO. They would have reported to me and I would have reported to the minister, or it would have been a direct report from the negotiating team to the minister. The minister would have given the direction on whether we were on the right page, we had the right strategy, and finally approved the final deal.

**Mr. Peter Tabuns:** So for that portion that you were involved with, it was very clear that it was the minister who was running the show.

**Mr. Serge Imbrogno:** On behalf of the government. Then we would take the negotiated deal and bring it through for approval, to treasury board, cabinet, on the portion that was the sunk cost. But I think, very much, the minister would have made the decisions on moving forward with the negotiations and finalizing them, based on the advice from the negotiating team and the deputy.

**Mr. Peter Tabuns:** Okay. One of the things we’ve come across very consistently is this proposal—in the



Oakville piece—that TransCanada had to be made whole. As I read the documents, that seems to have come out of the Premier's office. Do you know who was pushing this idea that TransCanada had to be made whole, that they would suffer no losses in this deal?

**Mr. Serge Imbrogno:** I don't know who made that commitment. When I became involved in the files, the arbitration agreement was drafted already in a particular way. So I'm not sure who made that particular commitment.

**Mr. Peter Tabuns:** Okay. With regard to Mississauga, the Greenfield South, I think the number that we're using is \$180 million or \$190 million in costs, paying off EIG, dealing with the incomplete construction, etc. Are there any other costs beyond that that we need to be aware of?

**Mr. Serge Imbrogno:** I think, just like the TransCanada plant, there are other system benefits and costs related to Greenfield. The \$190 million is very much the sunk costs related to the decision not to move forward with Greenfield.

**Mr. Peter Tabuns:** So can you tell us what the other benefits and costs are? Are we talking transmission lines that have to be put in place? Are we talking gas management again? Are we talking land cost? What is remaining for ratepayers to cover in this matter?

**Mr. Serge Imbrogno:** It's hard for me to answer that question because I've seen the auditor's report; I've commented on it; I know it's coming out on the 15th. So it's hard for me to answer that question without providing more details on what the auditor may be coming out with on the 15th.

But I would say in general, similar to Oakville, there are costs related to the new site; there are costs related to moving the site from the existing location. So there are similar types of system costs and also system benefits, where you're moving the date of the capacity contract several years out. So there are savings there from not having to make that payment for power that we don't need.

**Mr. Peter Tabuns:** Net, are there higher costs still to be paid?

**Mr. Serge Imbrogno:** I think, with the auditor's report coming out on the 15th—I've talked to the auditor, and he very much wants to be able to provide that update directly to the committee and to the House.

1750

**Mr. Peter Tabuns:** Out of consideration for the auditor and you, I'll press you no further. I look forward to interesting things in his report.

Can you expand on your opening comments? You said, "As Deputy Minister of Energy, I was involved, along with the OPA and outside legal counsel, in the implementation of the decisions to relocate the plants pertaining to Greenfield South ... and TransCanada...."

Can you tell me what you did with regard to Greenfield South?

**Mr. Serge Imbrogno:** It was very much the same role that I played with TransCanada. I wasn't directly on a

negotiating team, but I would get reports in from the negotiating team, brief the minister on progress or have the negotiating team brief the minister directly. That would have been my role: just to make sure that we were providing strategic advice to the negotiating team and briefing the minister.

**Mr. Peter Tabuns:** How much time do I have left, Chair?

**The Chair (Mr. Shafiq Qaadri):** Two minutes.

**Mr. Peter Tabuns:** I've been told today that Eastern Power has still not decided on a site for their Sarnia plant. Do you have knowledge about this?

**Mr. Serge Imbrogno:** The agreement with Greenfield was that they had alternate sites that they could use. There was the OPG site, but I think there's another site two kilometres from the Lambton site that they could also develop. It was very much up to Greenfield to decide which of those two sites they wanted to move forward with.

**Mr. Peter Tabuns:** Let's see: It's about a year and a half. Is there any particular reason that you're aware of that they are not moving forward with their contract?

**Mr. Serge Imbrogno:** My sense was they are preparing to do the environmental assessment and maybe doing strategic analysis of the two sites: which is better for them. I haven't followed up on—

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Peter Tabuns:** So there's no obvious barrier that you've seen—

**Mr. Serge Imbrogno:** Not that I'm aware of, no.

**Mr. Peter Tabuns:** Were there previous problems with Eastern Power developers, in your dealings with them and the ministry's dealings with them at Keele Valley?

**Mr. Serge Imbrogno:** At Keele Valley—well, we had the outstanding litigation with them. I think the Keele Valley site was a landfill gas site. It had dwindling methane gas, so there were issues with their contract in terms of the economics of the contract. But other than the ongoing litigation, I don't remember any other issues.

**Mr. Peter Tabuns:** Were they any more problematic than any other private power contract that you were dealing with at the OEFC?

**Mr. Serge Imbrogno:** Well, we did have that outstanding litigation. We usually don't have outstanding litigation with a lot of our—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns. To the government side, to Mr. Del Duca: 10 minutes.

**Mr. Steven Del Duca:** Thanks, Mr. Chair. In the interest of full disclosure for the opposition, I have only one question, so you can be ready after this one is done, okay?

As I'm sure you're aware, Premier Wynne committed in her throne speech, and on multiple occasions since the throne speech, that her government—our government—is committed to incorporating more local decision-making in the siting of energy infrastructure.



She also expanded the mandate of this committee to provide the House with concrete recommendations on the siting of these types of plants in the future.

So I'm wondering, given your experience and your expertise, what would be your recommendations as to how future sites should be selected?

*Interjection.*

**Mr. Serge Imbrogno:** Yes. That's a tough question for me to answer. I know the ministry right now is looking at that issue as well, looking at—

*Interjection.*

**Mr. Serge Imbrogno:** We're looking at the issue of more municipal involvement in decision-making. So I think, just based on that, one of the outcomes would be more involvement of municipalities on siting in the first place. I think that would be one of the outcomes that would be appropriate.

**Mr. Steven Del Duca:** Great. Thank you very much for your testimony today.

**Mr. Serge Imbrogno:** Okay, thank you.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Del Duca. To the PC side: to Monsieur Leone.

**Mr. Rob Leone:** Thank you, Mr. Chair. Mr. Imbrogno, I have a few questions that I'd like to ask. Through the course of your conduct as the deputy minister, when you are engaged in a process of trying to advise the government or the minister of potential options and you're engaging different stakeholders in the course of doing your work, is it normal for you to perhaps take notes of what happened with your discussions with various stakeholders?

**Mr. Serge Imbrogno:** It depends on the meeting. I usually jot down a few notes.

**Mr. Rob Leone:** So if you were tasked with, say, providing some options to a company that had a contract cancelled with respect to a gas plant cancellation and you were looking at different options associated with resiting said gas plant, would you believe that you would probably be taking some notes in terms of what were the discussions you had with that third party?

**Mr. Serge Imbrogno:** I think that would be reasonable, yes.

**Mr. Rob Leone:** So, in essence, we had a witness come forward who was party to some of these negotiations who stated that actually, in fact, no notes were taken in providing such advice to the government. Do you find that hard to believe?

**Mr. Serge Imbrogno:** I can just speak for myself. If I were in a similar meeting, I would have taken notes, or if I didn't take notes at the meeting I would have tried to remember what happened at that meeting and maybe put forward notes after.

**Mr. Rob Leone:** Okay. I'm going to ask you some questions with respect to some issues involving Jesse Kulendran, if you don't mind.

We have a memo that was leaked to us. I don't know who leaked it to us, but it was dated October 3, 2012, the subject of—I think you probably have seen this memo. I'm just going to read a portion of that for you.

It says this: "As you are aware, both Ziyaad and I have been clear that this is in fact what Jesse Kulendran told us to do at the meeting on" October 22, which, respectively, talks about the exclusion of attachments and correspondence. "After our meeting yesterday, I followed up with Ziyaad who reminded me that at the" October 22 "meeting, Jesse requested that we go page by page through OPA's non-privileged Oakville documents. During this page flip Ziyaad and I put Post-it Notes on the documents based on the direction Jesse was giving us during the meeting. These Post-it Notes have never been removed from the documents."

Have you seen these documents—

**Mr. Serge Imbrogno:** No.

**Mr. Rob Leone:**—that are being referred to in here?

**Mr. Serge Imbrogno:** Those would be the OPA documents.

**Mr. Rob Leone:** And therefore you would not have seen them?

**Mr. Serge Imbrogno:** No.

**Mr. Rob Leone:** Okay. We've also learned from Peter Wallace that there was an investigation—the fact that on October 22, Jesse attended a meeting. I think you stated in your testimony earlier today that, typically, when legal services or the legal branch requests a meeting, legal services typically attend, and that when legal services can't attend for whatever reason, typically that meeting is cancelled. Is that correct?

**Mr. Serge Imbrogno:** Just to be clear, going forward, I said that should absolutely be the policy. But I think it would have been ideal if that happened in that case, but it didn't.

**Mr. Rob Leone:** Okay. Now Mr. Wallace talked about a report that was conducted by the Attorney General's office. Were you aware of this report?

**Mr. Serge Imbrogno:** When I informed Peter that this allegation was made, we agreed that we would deal with it after the search was completed. What I understood from the secretary was that he was going to ask MAG lawyers to interview Jesse and to get her side of what happened. I think the intent then was to have the OPA do a similar process, and I think Colin hired external lawyers to talk to the two people at the OPA who were at the meeting. Then I believe the external lawyers from the OPA had a discussion with the Ministry of the Attorney General's internal lawyers to compare notes, basically.

**Mr. Rob Leone:** So that was the investigation, but did you see the report?

**Mr. Serge Imbrogno:** No. I'm not sure if there was a report or if it was a verbal update, but I haven't seen a report.

**Mr. Rob Leone:** And were you ever briefed verbally on what the conclusion of that report was?

**Mr. Serge Imbrogno:** Just at a very high level, that they didn't find anything that would suggest that Jesse was not telling the truth, but they didn't find anything that was conclusive either.



1800

**Mr. Rob Leone:** Okay. Now, in your opening statement, you talked about providing the OPA with a list of search terms that were used.

**Mr. Serge Imbrogno:** Yes.

**Mr. Rob Leone:** And I think Mr. Fedeli has asked for those search terms.

**Mr. Serge Imbrogno:** Yes.

**Mr. Rob Leone:** So I'm assuming these search terms were written down in some way, shape or form?

**Mr. Serge Imbrogno:** For the second search, because in the first search people were using different search terms, we wanted to make sure that everyone consistently searched on the same terms. So I think on the second search we had a list of 25 search terms between Mississauga and Oakville that everyone would have used, and we would have shared that list with the OPA.

**Mr. Rob Leone:** So there was a list of search terms.

**Mr. Serge Imbrogno:** Yes.

**Mr. Rob Leone:** Was there a process enumerated in terms of how to conduct that search?

**Mr. Serge Imbrogno:** For the second search, we tried to make sure that everyone followed a consistent process, so we would have outlined more of a plan for people to follow.

**Mr. Rob Leone:** Okay. And do you have knowledge of a list of people who would have been asked to perform said search with these search terms?

**Mr. Serge Imbrogno:** From the ministry side, we would have a list of everyone that we asked to search, and then we would have everyone that had responsive records.

**Mr. Rob Leone:** Would you be able to provide that list to this committee?

**Mr. Serge Imbrogno:** Sure. Do you want the list of the names or the number of people that we—

**Mr. Rob Leone:** Well, I'd like, actually, if you have the whole plan, to produce that plan, but I'm interested in the names as well as the search terms that were in fact provided.

Now, in the process of undergoing the document search—I know that you were in estimates with Minister Bentley when we were undertaking the discussion, so you were part of that, and I remember your testimony whenever we asked questions. Sometimes Mr. Bentley would, because you were new, answer the question on your behalf. But in the process of coming up with a document search and undertaking what the estimates committee has asked, were there any communications that you had with any political staff?

**Mr. Serge Imbrogno:** In terms of discussions with the minister or the minister's office?

**Mr. Rob Leone:** With respect to the request from the estimates committee to produce documents.

**The Chair (Mr. Shafiq Qaadri):** You requested a two-minute warning.

**Mr. Rob Leone:** Thank you.

**Mr. Serge Imbrogno:** We would have had discussions with the minister in terms of briefings on

what the public committee motion was about and what the obligations were.

**Mr. Rob Leone:** Did you have a meeting that would include perhaps the chief of staff to the minister in the process of doing this?

**Mr. Serge Imbrogno:** I would think the chief of staff would have been part of those discussions.

**Mr. Rob Leone:** Okay. How about the Premier's office? Do you think a representative of the Premier's office would have been involved in this as well?

**Mr. Serge Imbrogno:** Not when I was briefing the minister; I didn't—

**Mr. Rob Leone:** But in the course of the conversations that would happen in these meetings, would there be reference to the fact that the Premier's office was in fact requesting certain things to happen? Do you have any recollection of that?

**Mr. Serge Imbrogno:** The only thing I remember is just in terms of the timing, that there were what I understood discussions between the government House leader's office about the timing of releasing documents to estimates, but that's all that I—

**Mr. Rob Leone:** Did you have any conversations with Chris Morley?

**Mr. Serge Imbrogno:** No.

**Mr. Rob Leone:** David Livingston?

**Mr. Serge Imbrogno:** Not on document search, other than when I reported to David that the OPA told me on the 28th that they had missed certain files, and that was David that I talked to on that.

**Mr. Rob Leone:** Dave Phillips?

**Mr. Serge Imbrogno:** Well, I've seen Dave Phillips around as part of the government House leader's discussion, but I didn't talk to him directly.

**Mr. Rob Leone:** How about your conversations with anyone involving who actually made the decisions? I know we're trying to reflect—I don't have enough time to go through these questions, I don't think, but I guess a sense of some of the key decision-makers. What would your role have been with respect to the document disclosure?

**The Chair (Mr. Shafiq Qaadri):** The question will have to remain rhetorical, Mr. Leone. I thank you for your questions, and I thank you, Mr. Imbrogno, for your presence and your stewardship in your various capacities, latterly at the Ministry of Energy.

We have two motions before the committee, and I'd invite Mr. Tabuns, the said author, to enter into record. Mr. Tabuns.

Grazie, signore. You're officially dismissed.

**Mr. Peter Tabuns:** I move that any and all personal and legal counsel notes and documents from meetings and debrief meetings referred to by Craig MacLennan in his April 9, 2013, testimony to the Standing Committee on Justice Policy, following his meeting with Trans-Canada, be tabled as soon as possible with the Standing Committee on Justice Policy.

All members of the committee will remember Mr. MacLennan referred to I think it was three meetings in



which notes were taken and, in one instance, where he'd debriefed legal counsel. This motion refers to production of those notes.

**The Chair (Mr. Shafiq Qaadri):** Thank you. The motion is before the House floor for debate.

**Mr. Rob Leone:** The committee.

**The Chair (Mr. Shafiq Qaadri):** Before committee.

Before we continue, I'd just like to acknowledge the presence of two future members of Parliament, Shamsa Qaadri and Shafiq Qaadri Jr.

*Interjections.*

**Mr. Peter Tabuns:** Welcome.

**Mr. Victor Fedeli:** Recorded vote.

**The Chair (Mr. Shafiq Qaadri):** A recorded vote has been requested. Are there any comments on this particular motion before we vote on it? Fair enough.

**Mr. Rob Leone:** I have one comment.

**The Chair (Mr. Shafiq Qaadri):** Yes, Mr. Leone. Go ahead.

**Mr. Rob Leone:** I'm surprised that the Liberals haven't asked for a 10-minute recess.

*Interjections.*

**Mr. Victor Fedeli:** We've got kids here.

**Mr. Rob Leone:** That's right.

**The Chair (Mr. Shafiq Qaadri):** Fair enough. If there's no further comments, I'll invite the vote.

#### Ayes

Delaney, Del Duca, Fedeli, Leone, Natyshak, Tabuns, Yakabuski.

**The Chair (Mr. Shafiq Qaadri):** None opposed. The motion carries.

Mr. Tabuns, your second motion.

**Mr. Peter Tabuns:** I move that all documents pertaining to estimates of transmission and gas management costs of the Oakville gas plant relocation in possession of the Deputy Minister of Energy's office be tabled as soon as possible with the Standing Committee on Justice Policy.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns.

**Mr. Peter Tabuns:** Somewhat tortured English, but I think you understand what I'm getting at.

**The Chair (Mr. Shafiq Qaadri):** We'll take any language at this point, Mr. Tabuns.

**Mr. Peter Tabuns:** I'm so pleased.

**The Chair (Mr. Shafiq Qaadri):** Are there any comments before—yes, Mr. Delaney?

**Mr. Bob Delaney:** Just clarification: You were sort of changing a little bit of it on the fly.

**Mr. Peter Tabuns:** Yes, I was.

**Mr. Bob Delaney:** In possession of the deputy minister's office of the Ministry of Energy be tabled—

**Mr. Peter Tabuns:** Correct.

**Mr. Bob Delaney:** Okay. Fine.

**The Chair (Mr. Shafiq Qaadri):** Thank you. Further comments? Seeing none—

**Mr. Steven Del Duca:** Recorded vote.

#### Ayes

Delaney, Del Duca, Fedeli, Leone, Natyshak, Tabuns, Yakabuski.

**The Chair (Mr. Shafiq Qaadri):** None opposed.

If there's no further business—

*Interjection.*

**The Chair (Mr. Shafiq Qaadri):** We have one more motion, which is now being distributed—ably.

**Mr. Steven Del Duca:** I'm getting motion sickness.

**The Chair (Mr. Shafiq Qaadri):** That is a good line.

*Interjection.*

**The Chair (Mr. Shafiq Qaadri):** "Motion sickness": Let that be in Hansard under my name.

**Mr. Peter Tabuns:** I move that the OPA provide any and all reports from their legal counsel in respect of their internal investigation of the conduct of Jesse Kulendran and her role in the OPA's production of documents.

**The Chair (Mr. Shafiq Qaadri):** Thank you. Comments?

*Interjection.*

**The Chair (Mr. Shafiq Qaadri):** Yes, Mr. Leone?

**Mr. Rob Leone:** Just a question of clarification: You're saying all reports. Should we expand that to include all correspondence, simply because I've heard alluding to the fact that these reports were verbal?

**Mr. Peter Tabuns:** I have no problem saying "reports and correspondence."

**Mr. Rob Leone:** Okay.

**The Chair (Mr. Shafiq Qaadri):** Fair enough. The addition's been duly noted and entered. Are there any further comments before we vote?

**Mr. Victor Fedeli:** Recorded vote.

#### Ayes

Delaney, Del Duca, Fedeli, Leone, Natyshak, Tabuns, Yakabuski.

**The Chair (Mr. Shafiq Qaadri):** Thank you. The motion is carried.

If there's no further business, the committee is adjourned.

*The committee adjourned at 1809.*







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## Legislative Assembly of Ontario

Second Session, 40<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 40<sup>e</sup> législature

# Official Report of Debates (Hansard)

Tuesday 16 April 2013

# Journal des débats (Hansard)

Mardi 16 avril 2013

**Standing Committee on  
Justice Policy**

Members' privileges

**Comité permanent  
de la justice**

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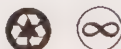
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## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE POLICYCOMITÉ PERMANENT  
DE LA JUSTICE

Tuesday 16 April 2013

Mardi 16 avril 2013

*The committee met at 0830 in room 151.*

## MEMBERS' PRIVILEGES

**The Chair (Mr. Shafiq Qaadri):** Thank you, colleagues, and welcome to the Standing Committee on Justice Policy. As you know, we're here to consider issues with reference to energy infrastructure and, in particular, the gas plants.

## MS. SHELLY JAMIESON

**The Chair (Mr. Shafiq Qaadri):** I welcome our first witness to the committee testimony, Ms. Shelly Jamieson, who will be sworn in very ably by the Clerk.

**The Clerk Pro Tem (Mr. Trevor Day):** Place your left hand and raise your right hand. Do you solemnly swear that the evidence you shall give to this committee touching on the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

**Ms. Shelly Jamieson:** I do.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Ms. Jamieson. I know that as a former secretary of cabinet, you know the drill very, very well. You have five minutes for an opening address, beginning now, and then a rotation of questions. Please begin.

**Ms. Shelly Jamieson:** Thank you. Good morning. I'm Shelly Jamieson. I am currently the chief executive officer of the Canadian Partnership Against Cancer, and I've been there since July 2012.

I'm not going to go through my entire resumé, but I will confirm what I assume is of most interest to the committee. I served as the secretary of cabinet, clerk of the executive council and head of the Ontario public service from January 2008 to December 2011, the period during which the government announced its decisions regarding the Oakville and Mississauga gas plants. I appreciate the opportunity to appear today and to speak to the role of the Ontario public service with respect to these decisions.

As the committee is aware, prior to my departure, the public service was involved in the implementation of the government's decisions to cancel and relocate the Oakville and Mississauga gas plants. As the committee is also aware, these decisions related to contracts between the Ontario Power Authority and the proponents of these

two projects. Not only was there considerable public and political interest in these transactions, there was the risk of litigation against both the Ontario Power Authority and the crown.

As a result, the job of the public service was to work with the Ontario Power Authority to offer our best advice to ministers and to the Office of the Premier on the implementation of their decisions. Given the nature of these decisions and the context in which they were made, I also believed our job was to get the best possible value and outcome for Ontario.

As the secretary of the cabinet, my primary role was to identify the expertise that would be needed to work with the Ontario Power Authority to support what I knew were going to be very complex and politically sensitive commercial decisions and negotiations.

Aspects of both transactions necessitated input from a number of ministries, including the Ministry of Energy, the Ministry of the Attorney General and the Ministry of Finance, as well as agencies and offices including the Ontario Power Authority, Infrastructure Ontario and Ontario Power Generation.

As is often the case with issues involving multiple ministries and parties, some months after the decision to terminate the Oakville contract was announced, I was asked to coordinate the discussions between these various parties and ensure that they and the government had the information needed at various critical stages in the negotiations.

Although I was coordinating these discussions, we were implementing decisions of the government, and I continued to get my direction from one of three sources: the Premier, the executive council or cabinet, or the chief of staff to the Premier.

Later in the summer of 2011, I asked Deputy Minister Giles Gherson, who was then deputy minister of policy and delivery in cabinet office, to take the lead on that coordinating role. Deputy Gherson then worked with my office, the Premier's office and various deputy ministers and officials at different points in time as the file progressed. I was also in direct contact with many of these individuals throughout this period.

In the Oakville file, much of the early work was taking place against the backdrop of unsuccessful negotiation between the Ontario Power Authority and the proponent. I asked David Livingston, who was then head of Infrastructure Ontario, to serve as an intermediary between the

public service, the Ontario Power Authority and the proponents. In these early days, this was not about a particular agreement, but whether an agreement was even possible and under what circumstances.

Because this group model was well established for Oakville, a similar approach was then taken for the Mississauga file following the 2011 election. I was, however, involved in this file only until December 2011, when I left the public service.

At the time of my departure from the public service, active negotiations were still proceeding on both files. I'm therefore not in a position to speak authoritatively about the process or the contents of these final agreements.

I wish to confirm for the committee that I did consult with the former Deputy Attorney General and make a decision to screen three individuals from further involvement in the Oakville negotiations. This decision was made because their earlier involvement with the proponents made them potential witnesses in threatened litigation resulting from the decision to cancel that particular contract. I felt this step was appropriate to protect their interests but, more importantly, those of the public service, should the matter result in litigation.

With that, I would be pleased to answer your questions.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Ms. Jamieson. Thanks for your precision timing as well.

Yes, Mr. Yakabuski?

**Mr. John Yakabuski:** I would like to ask for a five-minute recess prior to questioning of the witness.

**The Chair (Mr. Shafiq Qaadri):** That's within your prerogative. A five-minute recess is agreeable? Five minutes.

*The committee recessed from 0836 to 0841.*

**The Chair (Mr. Shafiq Qaadri):** Thank you. Back in session, and we'll pass Ms. Jamieson to the Conservative side, to Mr. Fedeli. Twenty minutes.

**Mr. Victor Fedeli:** Thank you very much. Good morning, Ms. Jamieson. Thank you very much, first of all, for your public service and now for your service with the charitable organization. It's much appreciated.

Your opening statement was quite revealing, actually—obviously well thought out and well crafted. You confirm basically what Mr. Livingston told us when he was here. He called you the “centre of my decision-making,” as you are undoubtedly aware. He said that you and Mr. Segal and Mr. Lindsay were the three people that everything revolved around in terms of the files. So I'm going to ask you to take a couple of minutes and sort of briefly walk us through the evolution of the Oakville gas plant cancellation. When did you first become involved, who were you dealing with, who contacted you first, those types of things—the discussion. Just a very brief one, but a brief and concise one, if you don't mind.

**Ms. Shelly Jamieson:** Certainly. I would say that I wasn't involved myself. I certainly was reading the paper and understanding that in Oakville there was an issue and the citizens of Oakville were objecting to the fact that the

plant was going to be located there. About a week before October 7, 2010, the Deputy Minister of Energy at the time, David Lindsay, came to my office to tell me that his minister was considering sending a letter to the Ontario Power Authority to cancel the project.

**Mr. Victor Fedeli:** When was that again?

**Ms. Shelly Jamieson:** About a week before the October 7, 2010, letter was sent. He came to tell me because he reported to me and because good deputies make sure their secretary of cabinet isn't surprised by anything, and good secretaries of cabinet check in with the Premier's office to make sure that a minister is actually doing something that they know about.

**Mr. Victor Fedeli:** So you were informed a week before October 10 by David Lindsay.

**Ms. Shelly Jamieson:** I was.

**Mr. Victor Fedeli:** And who did you then inform?

**Ms. Shelly Jamieson:** I informed the chief of staff at the time in the Premier's office. I didn't inform him; I asked him if he knew that this is—because the minister had the authority to send this direction, and they did.

**Mr. Victor Fedeli:** And did he know?

**Ms. Shelly Jamieson:** And they did. So, after that, over to the Ontario Power Authority because, as you know, the agreement is between the Ontario Power Authority and the proponent. So they go away, and it's not on my radar screen, other than—

**Mr. Victor Fedeli:** Did they know?

**Ms. Shelly Jamieson:** Did the Ontario Power Authority—

**Mr. Victor Fedeli:** When you got there to tell them that the—

**Ms. Shelly Jamieson:** Oh, I didn't check with the Ontario Power Authority. They got a letter. I know they knew. They got a letter from the minister. And so they went away to do their negotiations with the proponent about the cancellation, and that went on for months and months and months. Every now and then, the deputy of energy would tell me mostly that it wasn't going well.

Sometime in the spring of 2011, I was notified by the deputy of energy again that the negotiations seemed to have fallen apart between TransCanada and the Ontario Power Authority. Around April 2011, we received notice that TransCanada intended to litigate. We were named in that litigation. So now, in the secretary of cabinet's office, that becomes a bigger issue, and there is sort of more involvement.

As the spring went on, we tried to get up to speed on where the negotiations were and if there was any further discussion, and there wasn't. Now we were named in litigation, and so I was asked by the Premier's office to look into whether in fact there was a deal to be had to avoid litigation, or something else. So what you'll see is—as I said in my statement, I knew I needed help. Being the secretary of cabinet is a full-time job. It's not my job actually to be out there leading these negotiations. So I do what the secretary always does: I assembled a team of people with the best expertise to assist me in this regard. I thought about several candidates. I decided David



Livingston was the person I thought I could ask to undertake this assignment. I asked David around the third week in June. I phoned him and asked him if he'd do me a favour, and he said he would. He has lots of experience with commercial companies. We were looking for someone to be the point person. I assembled a team of internal expertise, including the OPA, so that we could make sure we move forward.

I'm not sure if that's as far as you want me to go or—

**Mr. Victor Fedeli:** No, that's quite revealing, considering Mr. Livingston downplayed his role and told us you were at the centre of all of this. He named you, Mr. Lindsay and Mr. Segal repeatedly. Over and over and over, he said, "I don't know." "I don't know." It was Shelly Jamieson, Shelly Jamieson, Shelly Jamieson.

**Ms. Shelly Jamieson:** When I was refreshing myself for my appearance today, I did read Mr. Livingston's testimony, and I would say this: There was a three-week intense period after my phone call with Mr. Livingston when he was engaged—and he was the public face. He was the only person speaking to the proponent on behalf of all of us. That's actually pretty common. There was a group of us who were talking about the negotiations and trying to understand the contracts and thinking about our strategy, but there was one person pointed forward. If David had gone off and done something that I hadn't anticipated, I wouldn't have been very happy about that. But that's about implementation and that's on direction from the government, and by that I mean the Premier's office and the cabinet.

**Mr. Victor Fedeli:** So, was it the Premier's office and the cabinet that were—to use the expression—"driving the bus" on this?

**Ms. Shelly Jamieson:** Yes, in terms of the decision to cancel it. They asked our opinion about things like, "What is the avenue forward?" We said, "Litigation; a negotiated settlement; maybe some kind of arbitration or mediation," all of these options, and the direction I got back was unambiguous: "Investigate all of these things and try and understand, given this context, what is the best outcome for the people of Ontario."

**Mr. Victor Fedeli:** There's a Toronto Star story, and I didn't bring it with me. We've had it here 100 times. I know you're going to know the one I'm referring to, the one where TransCanada said to Brad Duguid—Minister Duguid at the time, Minister of Energy—"The decision's already made. Go talk to your bosses." Do you know which one I'm referring to?

**Ms. Shelly Jamieson:** Certainly I know that point in time. I don't know when it was, and I can't recall it right here.

**Mr. Victor Fedeli:** Okay. That's my mistake, then, for not having that down here today. We've had it here so many times.

**Ms. Shelly Jamieson:** If you have it, I'd be happy to look at it.

**Mr. Victor Fedeli:** It's in my old binder. I brought a new binder today, or I would have had it.

I want to go back to a week before October 10, 2010, when you were told by David Lindsay. Would the minister, Brad Duguid, have known at that time of the cancellation of—

**Ms. Shelly Jamieson:** Yes. That's where Deputy Lindsay heard about it.

**Mr. Victor Fedeli:** You think he heard about it from Minister Duguid?

**Ms. Shelly Jamieson:** Either that or his chief of staff. That's the only place he could have heard of it.

**Mr. Victor Fedeli:** Okay. When do you think or when do you know that the actual decision to scrap the power plant in Oakville was made? If you heard about it on the 3rd-ish of October, when do you understand the actual decision was made?

**Ms. Shelly Jamieson:** I don't have insight into that. I know when the letter went. Again, the minister has authority to send that letter without it going to cabinet. So I know the decision had been made by the time the letter left, which was October 7.

**Mr. Victor Fedeli:** When was cabinet first made aware, then, of the discussion to cancel Oakville?

**Ms. Shelly Jamieson:** I'm not aware of—it didn't come to cabinet through that fall. So I assume they were all aware; it was in the public realm. They may have had discussions in camera without us. It wasn't a decision that had to come to cabinet, so I'm not aware of when they became aware.

0850

**Mr. Victor Fedeli:** Okay. In your role as secretary of cabinet, would you have been privy to cabinet discussions?

**Ms. Shelly Jamieson:** Yes.

**Mr. Victor Fedeli:** Are you there in the room when cabinet has their meetings?

**Ms. Shelly Jamieson:** Yes. The way it works is, I attest to the discussions in the room. So I sign the minutes that come from cabinet. Also—or I did; this is all past tense.

**Mr. Victor Fedeli:** Yeah.

**Ms. Shelly Jamieson:** I don't have any authority—I couldn't park my car today.

**Mr. Victor Fedeli:** How times change.

**Ms. Shelly Jamieson:** How times change. I do attest to what happens. The government has to have me in the room when they make a decision that is to be recorded. We also, in Cabinet Office, plan the agenda. So there's back and forth about what's coming to cabinet this week. The agendas come from our office, and we keep track of the minutes.

**Mr. Victor Fedeli:** To the best of your recollection, what would be the first time the Oakville gas plant cancellation was discussed at cabinet?

**Ms. Shelly Jamieson:** July 29, 2011, is—I did go back to get my records—

**Mr. Victor Fedeli:** That's the famous Vapour minute.

**Ms. Shelly Jamieson:** That's exactly right, and that's the first time that I was in the room and they were discussing it.

I just would like to say, there is an opportunity for ministers only in cabinet, and that's when the rest of the staff leave the room. The Premier and the chair of cabinet use that as an opportunity to talk mostly about political business. We would rather be outside of the room, frankly, when they're having those discussions.

In some of those instances, Premier McGuinty had a preference for keeping me in the room for some of the discussions. So something could have happened at ministers only when I was out of the room, or it could have happened in ministers only when I was included in the room. That's just a practice.

**Mr. Victor Fedeli:** On July 29, 2011, cabinet first heard of the cancellation through the Vapour minute. Was the cancellation referred to as Project Vapour or was the word "vapour" used in that room or was the Vapour minute just called the "Vapour minutes"? Do you have any recollection?

**Ms. Shelly Jamieson:** I think both is the case.

**Mr. Victor Fedeli:** Okay.

**Ms. Shelly Jamieson:** I know there's been a lot of discussion about these names.

**Mr. Victor Fedeli:** You're aware of Project Vapour?

**Ms. Shelly Jamieson:** I am certainly aware of Project Vapour and Vapour-lock. The use of these names is something that's quite common, both in the private sector where I came from and—

**Mr. Victor Fedeli:** So to you, as the secretary of cabinet, the cabinet, the Premier's office, the word "vapour," the Vapour file, was well known?

**Ms. Shelly Jamieson:** Yes.

**Mr. Victor Fedeli:** Okay. You attended that 29th meeting.

**Ms. Shelly Jamieson:** Yes.

**Mr. Victor Fedeli:** Okay. Deputy Minister Imbrogno was here. He confirmed that the OPA provided the Ministry of Energy and, I presume, the Minister of Energy with all the costs associated with the cancellation. Were these numbers ever discussed at cabinet?

**Ms. Shelly Jamieson:** Okay. So this deputy minister you're referring to is one who wasn't—

**Mr. Victor Fedeli:** There at the time. You're right.

**Ms. Shelly Jamieson:** He wasn't the deputy at the time. He wasn't even in the ministry at the time.

**Mr. Victor Fedeli:** Yes.

**Ms. Shelly Jamieson:** But I'm happy to answer your question generally about costs, if that's okay?

**Mr. Victor Fedeli:** Yes, thanks.

**Ms. Shelly Jamieson:** Okay.

**Mr. Victor Fedeli:** I may have been referring more to Mississauga, but I realize you're not there much after the Mississauga cancellation.

**Ms. Shelly Jamieson:** That's correct.

**Mr. Victor Fedeli:** So I'll try to remember to stick to Oakville more for you today.

**Ms. Shelly Jamieson:** No, no, that's fine. That's fine. I just want to be clear.

As it pertains to costs, in the summer of 2011, we did not know what it was going to cost to stop the project. In

fact, in the spring of 2011 when we first started to talk about that, we started to try and figure out what the costs would be.

I think it's important for the committee to remember that this wasn't even a contract between us and somebody. It was a contract between the OPA and somebody. So we had to become familiar with the contract. We had to become familiar with gas plants. We had to lean heavily on the OPA's experience. They'd been through a negotiation, so there were residual costs, sunk costs—you know, it goes on and on.

**Mr. Victor Fedeli:** Was that known, that there were more than just the sunk costs?

**Ms. Shelly Jamieson:** Yes.

**Mr. Victor Fedeli:** Thank you. I want to go back to that July 29 Vapour minute. You have a meeting. The approval—actually, we've got the one, and I think it's document 1, if you don't mind us handing it out. This is PC doc 1, and you're going to be familiar with it. It's the famous agenda item, the "Ministry of Energy ... TransCanada" dated July 29, 2011, "Cabinet agreed that:

"The Minister of Energy be authorized to" etc.

So how do you tell the minister—I know he's in the room. He signed the agenda. How do you tell the minister, then, that "Cabinet tells you to go and do this. Cabinet has now authorized you to do a deal with TransCanada"? How was the minister officially told that?

**Ms. Shelly Jamieson:** Well, the minister would not have been surprised through this process. He would have been getting updates both from his deputy and his chief of staff—no, let me just think about that. He wouldn't have been getting—

**Mr. Victor Fedeli:** Is there a formal—is this in writing somehow? What do you do now? You've got a cabinet minute, 1-48/2011, that says:

"Direct to Cabinet—Policy

"Ministry of Energy

"Ministry of Finance ...

"Cabinet agreed that:

"(1) The Minister of Energy be authorized to:"—and it goes on—"Enter into an agreement," "Engage in settlement," "Report back to cabinet." How would the minister and the ministry formally be notified? Would you just say, "Hey, Brad, do this," or is there some kind of paperwork?

**Ms. Shelly Jamieson:** I would not have had a direct conversation with the minister, but as soon as this was signed, my office would have told the Deputy Minister of Energy that it was signed—that they were authorized to proceed.

**Mr. Victor Fedeli:** Now, how do you tell them that?

**Ms. Shelly Jamieson:** By telephone. I would have phoned them and said, "It's done."

**Mr. Victor Fedeli:** You would have phoned them. Would there be any paperwork, any paper trail?

**Ms. Shelly Jamieson:** There might be. There might be an email, but a decision like this would have—my EA or one of my deputies in Cabinet Office would have spoken directly to David Lindsay. He would have been very



aware. He would have helped prepare the minutes. He was part of our little team.

**Mr. Victor Fedeli:** Yes, we have the early versions of the minute.

**Ms. Shelly Jamieson:** We knew exactly what we were going to cabinet to ask for, and that's how he would have found out.

**Mr. Victor Fedeli:** Very good. Okay.

So, in the cabinet discussion, where I asked you and you acknowledged that they would know there's more than just the sunk costs, when Mr. Livingston was dispatched, if you will—that's my word—to go out and do that, where he came up with these five options, he said he had no upside limit. There was no financial limit put on it. Would you concur with that?

**Ms. Shelly Jamieson:** I would concur. We wouldn't have known what the upside limit was at that point in the process. We weren't even sure—we were headed to litigation; we'd received notice that we were headed there. Now we had to find out what was possible.

**Mr. Victor Fedeli:** So there's no limit on this. Was there any limit that the Premier was willing to pay for this?

**Ms. Shelly Jamieson:** Sorry, could you—

**Mr. Victor Fedeli:** There's no cap on this?

**Ms. Shelly Jamieson:** There was no cap on the mandate. There was, "Get information, come back and talk to us." But in each of these instances, we weren't just told to go and do something without coming back. We would have had to come back—come back with a memorandum of understanding, come back with a proposed settlement—so as the numbers became clearer, the check-ins come back.

This is normal for all of our processes in negotiation: First you get a mandate; in this case, the mandate was: Investigate if anything's possible. Is there a deal on the table to negotiate and avoid litigation? What would happen if we went to litigation? What else could you do other than litigation?

**Mr. Victor Fedeli:** So cabinet knew of Project Vapour; there was no limit set. Who, then, at the staff level, in your opinion, was most centrally involved in the Oakville—and, if you know about it, Mississauga—cancellations? Who was your pivot person that you would go to on all of these things?

**Ms. Shelly Jamieson:** For what?

**Mr. Victor Fedeli:** The Oakville cancellation discussion.

**Ms. Shelly Jamieson:** For a decision?

**Mr. Victor Fedeli:** Decision, discussion—mostly decision, then.

**Ms. Shelly Jamieson:** Decision would be the Premier or the chief of staff, for me; that's where I would go. But implementation—it's important to understand here: the public service provides input during the decision-making. The government—the elected officials—make decisions, and then we do implementation. The political side often puts checks and balances, as they should, into how we

implement, how we report back etc. That's what was the case here.

**Mr. Victor Fedeli:** Okay.

**Ms. Shelly Jamieson:** We couldn't have gone away and settled this for some number, come back and said, "Well, we did that." That's not the way that works. It was to go away, investigate and bring scenarios back with better detail as we got it, which we did.

**Mr. Victor Fedeli:** Do you recall any discussion on the \$712-million offer to settle with TransCanada?

**Ms. Shelly Jamieson:** I read mostly about that number after I'd left the public service. I did know when we became involved in the spring of 2011 that there had been many offers back and forth through the negotiations between the OPA and TransCanada. It's interesting to talk about something that was never agreed to. I don't know; there would have been many iterations of things that went back and forth, so I can't say that that \$712-million number sits in my head. What sat in my head is that the OPA and TransCanada—their negotiations had fallen apart.

0900

**The Chair (Mr. Shafiq Qaadri):** About a minute left.

**Mr. Victor Fedeli:** Okay. The decision to screen Jamison Steeve and Craig MacLennan off the Oakville file: Whose decision was that, and why was that necessary?

**Ms. Shelly Jamieson:** That was my decision, and it was because I became aware that they had had discussions with the proponent directly, and it was now my responsibility to look for an option. We needed one voice, and it had to be us, our team, to control that negotiation, to be as successful as we could be. And secondly, I was aware of the potential for litigation.

**Mr. Victor Fedeli:** Was there anybody else screened off that file?

**Ms. Shelly Jamieson:** Yes. Sean Mullin.

**Mr. Victor Fedeli:** Sean Mullin was screened off the file. Anybody else?

**Ms. Shelly Jamieson:** No, just the three of them.

**Mr. Victor Fedeli:** Why him?

**Ms. Shelly Jamieson:** Because he was involved in those discussions. I became aware of the three of them being involved in those meetings and screened them out.

**Mr. Victor Fedeli:** My neighbour here asked, is that a normal activity?

**Mr. Rob Leone:** Let me clarify if I can. For the political side to be engaged with TransCanada in this—is that a normal practice?

**Ms. Shelly Jamieson:** Well, our political colleagues have—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Leone.

Mr. Tabuns, 20 minutes.

**Mr. Peter Tabuns:** It's rather abrupt here, you'll find.

**Ms. Shelly Jamieson:** That's fine. I understand.

**Mr. Peter Tabuns:** Good morning. Thank you for attending. We appreciate it.

**Ms. Shelly Jamieson:** Good morning.

**Mr. Peter Tabuns:** Yesterday the Auditor General indicated that the cost of cancelling the Mississauga gas plant was \$275 million, and pretty continuously we've had ministers say to us that it was only \$180 million, \$190 million. Earlier this morning, you indicated that people would have been aware that there were more than sunk costs involved. Do you find it credible that a minister would not have been informed by the OPA that there were costs beyond the sunk costs?

**Ms. Shelly Jamieson:** First of all, let me say I read the papers this morning, but I have not seen the Auditor General's report. I always find him very helpful in hindsight, looking back and costing things, because it usually means we can move on—that the Auditor General has established a number and that's probably what it cost.

Point number two: If we could have come up with a deal where TransCanada could take its entire contract and move it somewhere else and only have some residual cost that was somehow not reflected—because they had spent a lot of money on Oakville—then I guess there could only be sunk costs. But these things are moving targets, because they're in negotiation.

In the summer of 2011, when I was there, we wouldn't have known what the costs were. Sunk costs would have been one category.

**Mr. Peter Tabuns:** But you would have been aware that other categories existed?

**Ms. Shelly Jamieson:** Yes.

**Mr. Peter Tabuns:** And you would have expected the Ontario Power Authority to brief the minister reported to on the risks that it was facing?

**Ms. Shelly Jamieson:** Yes.

**Mr. Peter Tabuns:** I would have thought so as well, to tell you the truth.

JoAnne Butler testified on March 19 that Colin Andersen, head of the OPA, was part of a weekly meeting with senior civil servants. She referred to it as the Meeting Makers. I don't know if you're aware of that group and if you were part of it.

**Ms. Shelly Jamieson:** What time frame are we talking about?

**Mr. Peter Tabuns:** We're talking about the period in the fall of 2010, as we go into the Oakville negotiations between the OPA and TransCanada.

**Ms. Shelly Jamieson:** I was not part of that group; I was not involved in the fall of 2010. But the Ministry of Energy would have been involved. It was their file. Cabinet Office typically doesn't get involved until many ministries are involved and the issue is in some trouble.

**Mr. Peter Tabuns:** So you weren't part of that group—

**Ms. Shelly Jamieson:** I was not.

**Mr. Peter Tabuns:** —and you're not aware of who the members were?

**Ms. Shelly Jamieson:** Not in the fall of 2010. But to be clear, I was the one calling the meetings beginning the spring of 2011, as we tried to—those would be my meetings.

**Mr. Peter Tabuns:** I'll come back to that.

**Ms. Shelly Jamieson:** Okay.

**Mr. Peter Tabuns:** Jamison Steeve testified at the end of October 2011 that as acting chief of staff and as principal secretary, he convened a group to deal with Greenfield South. He was working with Giles Gherson and with you to find the best advice to give government on meeting its commitment to shut down the plant. Can you tell us what advice came out of that meeting and whether notes were kept that can be tabled?

**Ms. Shelly Jamieson:** A specific meeting? Or was it a series of meetings?

**Mr. Peter Tabuns:** He convened an opening meeting with you, Giles Gherson and himself. There was a decision that had been made. You understood the consequences because you had been going through TransCanada. You were pulled together to give advice. Do you remember that meeting?

**Ms. Shelly Jamieson:** I don't remember that specific meeting because I had meetings myself throughout the fall that I would have said I called, and Jamison might not have been at, to do with that. So I'm not sure I can speak specifically to that meeting.

This is an opportunity, however, to talk about the importance of the trust and respect between us and our political colleagues. The foundation of our system is that if there's trust and respect, we do well. So we aren't keen to talk about the advice we give in casual forums—you have the written advice—or my personal advice because we want a setting where we're treated with respect and our advice is sought; that's the ideal scenario for the civil service. That's why we sign up; that's why we come to work.

For the political side to trust us, it's important that we don't talk about the situations where we gave advice and it was accepted or ignored. We don't brag when they accept it and we don't whine and complain when they ignore it. Both happen all the time and have happened with every government.

We take an oath of office; I've brought it with me today. I know I took an oath when I came here. I'm trying to make sure that I don't—I understand the importance of the issue you're talking about; I want to help you understand it. But I certainly, as the former head of the Ontario public service, don't want to erode the trust and respect element that we count on to be effective.

Whether our advice was listened to, what advice we gave, those are really questions for the members of the executive council, and I don't see that you've called any of them.

**Mr. Peter Tabuns:** No. We expect that we will.

**Ms. Shelly Jamieson:** We gave all kinds of advice. Premier McGuinty set a style with me that I very much appreciated, where my advice was always sought, not always listened to. But I always had the opportunity to give my advice and I appreciated that. I've always encouraged the public service not just to give advice on what they think the party of the day wants to hear, but what they think they're paid for by the people of Ontario. I got unambiguous direction on these files and we went



and implemented them. But the advice we gave into the decision-making process feels like it should be—I was allowed to give advice; we gave our advice. We did the best we could. It feels like I shouldn't be talking about those discussions in their gory detail.

**Mr. Peter Tabuns:** Chair, I need to think about that answer and I ask for a five-minute recess.

**The Chair (Mr. Shafiq Qaadri):** We welcome your thoughts, Mr. Tabuns.

**Ms. Shelly Jamieson:** Would you like to see our oath, or do you know it? All the civil service takes it.

**Mr. Peter Tabuns:** I don't know it, so it might not be a bad thing for me to see.

**Ms. Shelly Jamieson:** Would you like me to read it into the record? It's short.

**The Chair (Mr. Shafiq Qaadri):** Please go ahead.

**Mr. John Yakabuski:** He's asked for a five-minute recess.

**Mr. Peter Tabuns:** Yes. I don't mind if she reads the oath into—

**Ms. Shelly Jamieson:** Okay. It's the oath of office and confidentiality. This is the spirit in which we come to work every day. It would say:

"I, Shelly Jamieson, having been appointed as secretary of cabinet, do solemnly swear that I will, faithfully and impartially, discharge my duties. I will provide leadership to promote the values of service to the public, excellence in management, and recognition of employees as a vital resource. In doing so, I will uphold the highest level of service quality, integrity, and public trust.

"I will support the government in the development and implementation of its vision, policies, and priorities for the province of Ontario.

"Except as I may be legally required, I will not disclose any information or document that comes to my knowledge or possession by reason of my appointment. In all matters, I will abide by the conflict of interest guidelines and observe and comply with the laws of Canada and Ontario.

"So help me God."

Every civil servant takes this oath. It's an important underpinning of our system.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Ms. Jamieson. A five-minute recess?

**Mr. Peter Tabuns:** Thank you. Five minutes, please.

**The Chair (Mr. Shafiq Qaadri):** Fine.

*The committee recessed from 0909 to 0914.*

**The Chair (Mr. Shafiq Qaadri):** Thank you, colleagues. We are back in session.

Mr. Tabuns, the floor is yours.

**Mr. Peter Tabuns:** Thank you very much, Chair.

I've had a chance to look at the oath. It's clear that you won't divulge information unless you're legally required to do so.

**Ms. Shelly Jamieson:** No, I wasn't using this as a place to not answer questions, just to be clear. I was speaking to the spirit of what we're trying to do here. You have a specific thing that you're trying to get to the bottom of. I understand that. As a former head of the

Ontario public service, I don't want to erode the trust and respect so that we're excluded from conversations where we could be helpful in the future. That was my point. I'm happy to answer your question. If you'd like to rephrase it I'll probably just answer it.

**Mr. Peter Tabuns:** Fair enough. Can you tell us what advice you gave the government in the wake of the election, the promise to cancel the plant? You had gone through things with TransCanada. You had a sense of the kind of problems that you were going to be dealing with. What did you advise them to do with regard to Mississauga?

**Ms. Shelly Jamieson:** We gave, and I believe you have documents that show this, many options of things that could be done, including saying, "From now forward we will review the siting of these gas plants." We gave the option of passing legislation. We gave a series of options to the government. I got an unambiguous decision back that we were to proceed to stop the Mississauga plant. That's the question—Mississauga.

**Mr. Peter Tabuns:** What was the status of the Mississauga file when you left office?

**Ms. Shelly Jamieson:** The government, with the OPA, was in negotiations with the proponent, Eastern Power. Those discussions had begun. In those early days we had discovered there was an outstanding matter called Keele Valley with the proponent. The proponent was still building on the site and we were trying to establish a mechanism for having negotiations with them. That's where it was.

**Mr. Peter Tabuns:** And at that time did you have, accessible to you or brought to you, an estimate of the cost of the decision to relocate that plant?

**Ms. Shelly Jamieson:** No. Costs were starting to come in. We started to understand that there were turbines being built somewhere and they needed to be deployed and that there was cost for the land, and we were estimating and trying to understand, but these were negotiations at that point. So we still were trying to get a handle on—when I left, we were still trying to understand what the residual value of such a contract would be and if any of the business could be replicated somewhere else in the province.

We were of the view that the best-case scenario to get value for the people of Ontario was, rather than to write a cheque and have a proponent go away, that to write a cheque and have a proponent still deliver power was better. So we were very seized with trying to find another place for Eastern Power to operate, but that was not concluded by the time I left.

**Mr. Peter Tabuns:** And were you aware that Ontarians were potentially on the hook through taxes or rates for nearly \$150 million to the US-based hedge funds that had financed this plant?

**Ms. Shelly Jamieson:** That came up just as I was leaving. I became aware of an American funder, but I certainly was aware all the way through that Ontario taxpayers and ratepayers were on the hook for these costs—all of the costs.



**Mr. Peter Tabuns:** Were you aware of that amount at the time?

**Ms. Shelly Jamieson:** I was not.

**Mr. Peter Tabuns:** Okay.

**Ms. Shelly Jamieson:** I remember, just as I left—I would have to refresh my time on the dates—we became aware of an American interest in the file.

**Mr. Peter Tabuns:** So do you know if anyone was aware of the scale of the cost risk at the time the cancellation was decided?

**Ms. Shelly Jamieson:** I believe everyone knew—well, I believe I knew—that this had the potential to cost an awful lot of money. This was a big decision coming down the road unless we were able to negotiate something that mitigated those costs. So there was a wide range, and I couldn't speak to the range.

**Mr. Peter Tabuns:** Okay. The Auditor General indicated that the deal for Mississauga was not a good deal for Ontarians, but a good deal for Eastern Power. He indicated that Ontarians would be paying for bills that were never provided to negotiators, that savings favoured the private power company instead of the tax or rate base, and that massive amounts were paid to American hedge funds. Was this seen or would you have seen this as good practice?

0920

**Ms. Shelly Jamieson:** I haven't seen the Auditor General's report, so you're ahead of me in this regard because it was released yesterday.

I would say that the context in which we were working was to try and get the best deal, given the scenario, for the people of Ontario. That's all we were trying to do. I can't speak to who did well in the end. I don't actually even know the particulars of the deal in the end. You probably know more about that than I do.

**Mr. Peter Tabuns:** One of the things that was pointed out by the auditor yesterday was that the hurry to stop the construction put the OPA in an extraordinarily difficult position and weakened their negotiating hand. If you and the bureaucracy were seized with the idea that you had to get the best deal for ratepayers, did you make this argument with the government at the time that their approach was in fact increasing the risk?

**Ms. Shelly Jamieson:** I would have listed, in my head, many risks. One of them would have been that the ratepayer and the taxpayer were also at risk as construction continued. As long as construction was continuing and decisions were continuing to be made that cost money on a site where the government did not have any intent to have a gas plant, that also was a risk. So speed, to me, was important. Is it ideal? Probably not.

**Mr. Peter Tabuns:** Okay. In a different direction, we've recently been told by the former chief of staff, Craig MacLennan, that all his emails were destroyed by him. In fact, in our request as a committee for documents, no documents whatsoever were produced from the minister's office. In each minister's office, who's responsible for ensuring that documents are maintained in keeping with the law?

**Ms. Shelly Jamieson:** It is not the role of the civil service, and I don't have insight into their process.

**Mr. Peter Tabuns:** Do you expect that ministers and their staff will follow the law on document preservation?

**Ms. Shelly Jamieson:** I do.

**Mr. Peter Tabuns:** Do you have knowledge that they do?

**Ms. Shelly Jamieson:** I don't have knowledge that they don't. We are responsible for our records, but we aren't responsible for their records.

**Mr. Peter Tabuns:** When we asked the Premier's office for documents on projects Vapour and Vapour-lock, we were told they didn't exist. Do you have any knowledge as to whether or not the Premier's political staff destroyed their documents on a regular basis?

**Ms. Shelly Jamieson:** I have no knowledge of that.

**Mr. Peter Tabuns:** When you were cabinet secretary, did you receive emails or other correspondence from political staff about projects Vapour or Vapour-lock?

**Ms. Shelly Jamieson:** I did.

**Mr. Peter Tabuns:** So Sean Mullin or Jamison Steeve would actually have produced in writing documents that referred to Vapour and Vapour-lock?

**Ms. Shelly Jamieson:** On which project are we speaking? Vapour-lock, you said; both of them. Sorry. My normal point, as I said in my opening statement, would have been with the chief of staff. Jamison and Sean were screened out of the Oakville project, so certainly they weren't involved in anything after they were screened. Other than meeting requests and things, I wouldn't have gotten an email from Sean or Jamison—personally, I wouldn't have.

**Mr. Peter Tabuns:** Did you get emails from any other political staff?

**Ms. Shelly Jamieson:** I did.

**Mr. Peter Tabuns:** That referred to Vapour and Vapour-lock?

**Ms. Shelly Jamieson:** I did, from Chris Morley, the chief of staff.

**Mr. Peter Tabuns:** Okay. I think it's fair to say that such emails did exist and were circulated to senior people in cabinet, in the civil service. Certainly you saw them.

**Ms. Shelly Jamieson:** I did.

**Mr. Peter Tabuns:** One of the things that perplexes us in these hearings—and we've heard from Craig MacLennan, Jamison Steeve and others—is that it appears no one actually had responsibility for the Oakville and Mississauga files. Everyone says, "I had a little bit here; I had a little bit there." Who were the key political staff who had carriage of these files? Let's start with Oakville. Who did you look to, when you were brought in, to say, "What have you guys done? Where are we?"

**Ms. Shelly Jamieson:** I looked to the Ontario Power Authority and the Deputy Minister of Energy to be briefed, because I was not involved. It had been going on. I was aware of it. Those are the two places I looked to begin with, and I looked to the chief of staff, the Premier and cabinet, as it pertained to decisions.



**Mr. Peter Tabuns:** With regard to screening off the three people from the Oakville file, can you tell me what “screening off” means?

**Ms. Shelly Jamieson:** Yes. Screening is something that we use somewhat frequently but in very specific cases where we’re concerned that there’s somebody involved in a file who may have a bias or a perceived bias or may be involved in litigation. I think those are the kinds of things I can think of. There are a few examples in my time as secretary, but it’s not a frequent thing. I decided to use the screen in this instance, and what it means is no meetings, no correspondence, not to be discussed, not to be involved in the file any further.

**Mr. Peter Tabuns:** What prompted your action?

**Ms. Shelly Jamieson:** The Deputy Minister of Energy at the time came and told me, as we began to assume kind of a coordinating role for getting a deal with TransCanada, that they had heard back from legal counsel on the other side that there had been promises made or statements made that led TransCanada to believe that they could get some kind of deal. Who knows what the deal was? I was surprised by this. I had just begun this negotiation, and I didn’t know these meetings had occurred—

**The Chair (Mr. Shafiq Qaadri):** About a minute left.

**Ms. Shelly Jamieson:** It didn’t occur to me to ask, and so I sought the advice of the then Deputy Attorney General. I was worried about litigation. We had received notice that there was intent to litigate, so these people could be called as witnesses for what they said, plus I was trying to negotiate something. I was trying to understand how this would work.

I received advice. The Deputy Attorney General suggested the screen, as I recall, as a way, and I went and informed the chief of staff to the Premier that I was screening these three people out and why, and he said he understood.

**Mr. Peter Tabuns:** Did their continued relationship with TransCanada pose a threat that, under oath, they would be revealing decision-making within cabinet?

**Ms. Shelly Jamieson:** No. That wasn’t what my worry was.

**Mr. Peter Tabuns:** What was your worry, then?

**Ms. Shelly Jamieson:** My worry was that we were trying to have a central place, point, for negotiation, and when the civil service is trying to negotiate anything, the other side always tries to go around us to the political.

**Mr. Peter Tabuns:** I notice that, yes.

**Ms. Shelly Jamieson:** And that doesn’t help us. It works against us.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns. To the government side: Mrs. Cansfield, 20 minutes.

**Mrs. Donna H. Cansfield:** It’s nice to see you, Shelly. Welcome.

**Ms. Shelly Jamieson:** It’s nice to see you.

**Mrs. Donna H. Cansfield:** I wanted to ask a couple of questions about the whole issue around the documentation. What was it? Fifty-six thousand pieces of docu-

ments were subsequently filed with the request I think from Mr. Leone on correspondence etc. There’s been a lot of discussion around, first of all, the scope of that, so the question would be, have you ever dealt, as secretary of cabinet, around a request of a scope of that size?

And then, secondly, maybe you could take us through the process of how those documents would be retrieved, and then the other process about how they would be redacted and why.

**Ms. Shelly Jamieson:** Yes. Thank you for the question.

First, let me say, as secretary of cabinet, I never dealt with a standing committee request of this magnitude, so I actually would not have had that experience and, I should point out, did not have that experience. By the time you were asking as a committee for these documents, I was gone.

But there are many document requests, freedom-of-information requests etc. It’s almost a cottage industry inside government to prepare these things, so there are well-worn processes for searching people’s email inside the civil service and being able to understand the scope of a request, answer the question you’re asked, which ministry. Sometimes people ask for all documents pertaining to something and request a specific ministry, and they don’t realize that they’ll only get all documents pertaining to something in that ministry. You have to be specific about which ministry you’re asking for etc. That is one of the processes. We have experts who help us do this, both on the IT front but also on the privacy and confidentiality element.

The issue of redaction is important, and we aren’t involved at all in what’s redacted and what isn’t, so people don’t come and say, “Should we redact this or not?” There are rules around redaction. I have requested materials subsequent to leaving the OPS, when I was refreshing myself for here, and I see something is redacted, and it’s like my dentist appointment or something. It’s something on the bottom of an email where I’ve used that opportunity to say, “I won’t be here tomorrow for an hour and a half, because I’m going to the dentist.” It is felt that redaction is that or redaction is to do with completely unrelated issues, and usually it says on it, “Redacted because it’s unrelated.” These decisions are not made by the people closest to this file, for example. They’re made by professionals in the civil service who have a decision-making tree about how to do that.

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I think I will also say that I’ve read in the paper about the volume of information you’ve received and the way in which it was received. It looks like it was a bit of a mess. I understand that one of the responsibilities of this committee is to make recommendations. I don’t envy you; that’s a burden. But I think perhaps you could make recommendations about that process. Why you need 35 copies of the same document or something is kind of beyond me, and it can’t help you when you receive them because you have to go through mountains to find the relevant documents. There must be a better way to have a



dialogue so that you get what you want from us and so that you have confidence in redaction. Redaction is important; it's important to us, but it should be important to you, and you should trust it. It would appear to me, in some cases, that as a committee you don't. So it would be helpful if you could make comments and recommendations at the end about how that process could work better.

**Mrs. Donna H. Cansfield:** Actually, that's a really good point because I think there has been a fair amount of discussion that, in fact, the redaction meant that things were being hidden. It's not really, as you've identified through the civil service, that they redact to hide anything; it's they redact because it's a personal nature, and there is an actual process that's put in place.

Maybe if we had an opportunity at some point—not necessarily today—to understand that process, you're right, we'd be able to be more helpful, and ultimately, if there's another situation and documents are given out and redacted, people understand the process ahead of time. I would share the frustration of getting something, thinking I was getting something, and it's blank. Not understanding why it's blank is the frustration.

One of the other situations that you chatted about was the issue of a recommendation around siting. Part of the responsibility of this committee ultimately is to look at how we do this better in the future, so that we don't repeat, regardless of who is in government.

We heard something from—I can't remember which individual it was, but it was about what was happening in California where they actually put a group of people together and pre-sited all sorts of procurement places. It wasn't just power plants but, I guess, a number of renewable situations etc. In your recommendation, when you looked at the siting, can you expand on that for us?

**Ms. Shelly Jamieson:** I was confident that the OPA had followed its public consultation process and followed the existing siting rules. So off they go to Mississauga and Oakville. I was also completely convinced that the people of Mississauga and Oakville didn't want those gas plants in the end. I'm interested in how did we get to the point, then, that they were awarded.

It seems to me that we could be reviewing setbacks, we could be reviewing the kind of neighbourhoods where these things are set because people will feel better, not because I actually am worried about other concerns but just because people don't want them there.

It's interesting: I believe the government sited another 13 gas plants, and it went fine. In fact, in one community, they were getting transmission lines instead of the gas plant, and they said, "No, no, please; we don't want the transmission lines. They're too disruptive to land use etc. We want the gas plant." This is a different setting, where these two communities have made a different choice.

In the case of Oakville, I was wishing we'd had a more fulsome debate with the people of Oakville about the fact that it's not just "do nothing." You can't just choose not to have a gas plant, because you won't have power at some point in time. So if you're not going to generate the power from within your community, you

have to bring it from somewhere else, which means the discussion in Oakville, really, probably should be, "If not this, then what?" And what does that look like, so that people understand the choices they're making.

I'm hoping that the public consultation process is robust enough that when we're through, we're really through; we have a decision and that's the decision—and also that the siting requirements be reviewed. Those were the pieces of advice in that item that we gave.

**Mrs. Donna H. Cansfield:** You spoke about the consultation. That's certainly one of the areas where I think there was significant laxness, if that's the term, in terms of how robust that consultation was and whether or not it should be a part of the procurement process and really spelled out how it should take place.

I can share with you that I was at one in particular where it was extraordinarily limited to access; there were people on the streets because the place was just too small. It was going to take only the residents who were actually asked to participate, and when something of this nature is that significant, then one would think the proponent should have a far greater understanding of the complexities of consultation: what you are consulting about, how you go about doing it, how you engage. How do you then take those issues back into the community that you've heard? How do you resolve them?

Have you got any thoughts about that?

**Ms. Shelly Jamieson:** Well, just that what we want ideally is a robust and informed decision by the community so that there aren't any surprises, so that later on in the process we aren't faced with the reality of a massive objection and a reversal of decision. That's not in the interest of everyone.

**Mrs. Donna H. Cansfield:** One of the discussions that's currently I think again out there because of—well, lots of reasons, not necessarily just this. It's the whole issue around procurement as a whole that you discussed, that—what do I always say?—96% of the people live in about 4% of the land mass, or 94% live in 6%, whatever. But it's very close. So the issue of siting is critical, but also the issue of size is critical as well. You look at countries such as in Europe; they look more to distributed energy, combined heat and power distribution, and smaller plants in communities where they're not that obtrusive. So planning in regional or community or site planning becomes really very specific.

In your discussions around that siting, were those the kinds of things that you were giving advice to the government about?

**Ms. Shelly Jamieson:** Yes. I mean, we gave advice at a very high level, to be honest, about this option, and it didn't preclude the other options. It was in addition to "You could have a review of this mechanism for siting and for public engagement and make sure that it is as robust as it can be and it is recognizing what people are asking for." That is one of the pieces of advice we gave.

**Mrs. Donna H. Cansfield:** I guess my last question to you—this is nothing new; it has been going on since 1999, as I recall. Having been through the process in a



variety of roles, again, the idea here is how do we learn and how do we do things better? You were in a specific position to have far broader oversight, if you like, because it involved energy, it involved environment and it involved IPO—I mean, all sorts of different places. What is your advice going forward on how we could do this better?

**Ms. Shelly Jamieson:** I have two pieces of advice for the committee in that regard. One is, in both cases, both of these proponents received all the approvals that were necessary to proceed with their project. So that should be enough to proceed with a project, you would think. You would understand why the proponents would view it that way. However, obviously, as I've said, the people of Mississauga and Oakville felt differently, and maybe they only felt differently later. Maybe it was a smaller group at the beginning and then it was a bigger group at the end, but the reality is, in our fantastic province of Ontario, when the people speak, they speak to their elected members, and their elected members make decisions accordingly. That piece seemed to work at odds with all of the approvals that had been received.

I think we need a better understanding of public engagement that's honest about choices, that people understand it's not this or nothing—it's this or something else—and that the facts are all laid out in easy ways, in a participatory way.

Also, coming down to the system level, I think the relationship between the civil service and a standing committee should be re-examined in terms of document requests, so that you can do your job and we can do our job. The size and volume of the document requests that—I wasn't secretary when you sent it, but it means people aren't doing other things while they're assembling 35 copies of a specific deck.

So I think we have to come up with a trusting reciprocal relationship about how we provide information in a way that allows you to deliberate on what matters the most.

**Mrs. Donna H. Cansfield:** Thank you very much. I really appreciate your candidness.

**Ms. Shelly Jamieson:** Thank you.

**The Chair (Mr. Shafiq Qaadri):** Thank you. Further questions from the government side? Thank you.

To the Conservatives: 10 minutes. Mr. Fedeli.  
0940

**Mr. Victor Fedeli:** Thank you very much. I want to talk a little bit about the Auditor General yesterday. He presented a very interesting scenario where the government has consistently said that the Mississauga gas plant—I'm coming back to Oakville here with reference to yourself, but he said that the government has consistently said that the Mississauga gas plant cost \$190 million to cancel. He brought up the fact of a change in language from the government, from first using the expression "total cost of \$190 million"; then they changed their language to "cost to the taxpayer of \$190 million," because, as he learned, in the 10 side deals that were done, there was 85 million net more dollars. It was far

more than that, but there were some offsets. So a net \$85 million more that was borne by the ratepayer—that subtle change between the taxpayer having to pay \$190 million and the ratepayer picking up the other \$85 million, which nobody was informed about.

That \$85 million, by the way, came from things like transmission costs, gas supply and management costs, additional costs because of where the location was changed to. I asked the auditor if he will be using that same criteria in developing a cost for Oakville. He said yes, he would; he would be looking at transmission costs, gas supply and management.

I want to go back to this \$40-million number that the government has been using as the total cost for Oakville. In your time there, what can you tell me about cabinet's understanding of the total costs?

**Ms. Shelly Jamieson:** First of all, I read the \$40-million number in the paper after I had left my position, so I feel unable to comment on where it came from.

I do agree with you that there are buckets of costs. Depending on the structure of the final deal, those different buckets would have been whatever. It does not surprise me that the Auditor General will use the same construct in his Oakville analysis, because that's why we go to the Auditor General. He speaks a consistent language and he—

**Mr. Victor Fedeli:** That's why we went there, too, by the way.

**Ms. Shelly Jamieson:** He's very good at what he does. I never saw him as a threat to my job; I saw him as another source of information.

You will learn from this report what those different buckets are. It doesn't surprise me at all that you'll see an analysis with the same buckets in the future report.

**Mr. Victor Fedeli:** Would it surprise you if I told you that both an energy expert that was here and the vice-president of the OPA put those extra costs, plus sunk costs of \$40 million, at \$991 million to cancel and move Oakville? Would that surprise you?

**Ms. Shelly Jamieson:** It wouldn't surprise me that they're experts in their field. I can't comment on the number. I've never even heard that number. These are people who spend every day looking at these kinds of issues, and I'm sure they're very good at it.

**Mr. Victor Fedeli:** In your role, were you comfortable or uncomfortable with the role of political interference in this particular cancellation, the Oakville cancellation?

**Ms. Shelly Jamieson:** "Comfortable or uncomfortable." I was uncomfortable, when I assumed the lead in the implementation of the government's decision, to find out that there had been parallel conversations that may or may not have committed people to other things.

**Mr. Victor Fedeli:** I want to talk about that a little bit more for a second. Who was having these parallel conversations, and when?

**Ms. Shelly Jamieson:** I can't speak to the "when." It would have been between June 2011, maybe even before that—sorry; excuse me: October 2010 or earlier, and I



don't know how often. I know it was Jamison Steeve. I know Jamison was involved, and I know Sean Mullin and Craig MacLennan were involved. I don't know how often—I don't recall, to be honest. Maybe I did know at one point, but I don't recall.

**Mr. Victor Fedeli:** They were all political staffers of the Liberal Party?

**Ms. Shelly Jamieson:** Yes.

**Mr. Victor Fedeli:** And you think that was all around the first part of October.

**Ms. Shelly Jamieson:** No. I don't know exactly when it was, but I think it went on around the decision to cancel, and then about a negotiation to settle. I believe they were involved. I know they were no longer involved after we screened them.

**Mr. Victor Fedeli:** Okay. We have a lot of OPA emails back and forth that revealed they felt they were undermined, that the government and political staff were in contact with TransCanada and subsequently with Greenfield in circumventing the OPA and making their lives more difficult. How would you characterize the OPA's thoughts on that?

**Ms. Shelly Jamieson:** I would say that Colin Andersen was frustrated, and he told me so.

**Mr. Victor Fedeli:** He told you so. What would he have told you and when, and in what context?

**Ms. Shelly Jamieson:** Oh, in the spring, again, of 2011, he would have said, "We have to be organized and coordinated, and we can't have multiple discussions going on." I think you said that there was political interference in Mississauga, and I'm not aware of that. In fact, when we were given direction to proceed with the Mississauga closure, I did ask the Premier to ensure that his staff were not involved.

**Mr. Victor Fedeli:** When did you ask the Premier that question?

**Ms. Shelly Jamieson:** When he gave me direction, after the election, to close the plant.

**Mr. Victor Fedeli:** So we're talking about Mississauga now?

**Ms. Shelly Jamieson:** Yes.

**Mr. Victor Fedeli:** So the Premier gave you direction, and you said to him—I don't want to put words in your mouth, but words to the effect of, "Please don't have your political staff interfere this time"?

**Ms. Shelly Jamieson:** No. What I said is, "Premier, we will take on this assignment, and I would ask that you ask your staff not to reach out to this proponent," because it makes our job easier, and he agreed.

**Mr. Victor Fedeli:** And would you acknowledge that they had done that the last time, in the Oakville, which precipitated this?

**Ms. Shelly Jamieson:** I didn't say that to him, actually.

**Mr. Victor Fedeli:** No, but I'm asking you.

**Ms. Shelly Jamieson:** Yes.

**Mr. Victor Fedeli:** Is that what your underlying reason was?

**Ms. Shelly Jamieson:** Yes, it was.

**Mr. Victor Fedeli:** Because you had been through the experience a couple of years before where they had interfered in Oakville?

**Ms. Shelly Jamieson:** Half a year before; six months before.

**Mr. Victor Fedeli:** Half a year. Just so you know, what I was referring to back then was on October 5, when the folks from TransCanada had met with Minister Duguid at the time, where he was trying to put a political—they call it here in the documents "a political spiel," but that's the meeting when TransCanada would have "blew a gasket," they said, where they said, "Go talk to your bosses. We already have a deal." Is that the interference that you're referring to?

**Ms. Shelly Jamieson:** No. So that's 2010?

**Mr. Victor Fedeli:** Yes. October of 2010.

**Ms. Shelly Jamieson:** No, no, that isn't the—

**Mr. Victor Fedeli:** There was other interference, other than that one?

**Ms. Shelly Jamieson:** No. I was just referring to Mr. Steeve, Mr. MacLennan and Mr. Mullin.

**Mr. Victor Fedeli:** Yes. Those are the people that are involved in this meeting.

**Ms. Shelly Jamieson:** Yes, but I was asking in the spring of 2011, so it wasn't that specific instance. I'm not sure I even knew that had happened at the time.

**Mr. Victor Fedeli:** Okay. Do you think it was appropriate for these political staffers to be making deals with these companies without notifying or working with the OPA or the Ministry of Energy?

**Ms. Shelly Jamieson:** Political staff have relationships with stakeholders across the province, and that's their job and responsibility. In hindsight, it doesn't surprise me that they may have known people there or that they were talking to people there. It's just that at that point I wasn't involved, so it wasn't on my radar screen. When we sat down and we were asked to come up with a strategy to understand and avoid litigation, I didn't realize those discussions had gone on.

**Mr. Victor Fedeli:** So you did not realize that the Premier and his staff had already made a deal with TransCanada?

**The Chair (Mr. Shafiq Qaadri):** About one minute.

**Ms. Shelly Jamieson:** They didn't make a deal. If there was a deal, they wouldn't have needed us.

**Mr. Victor Fedeli:** The quote was, from TransCanada, "We got a deal with the PO. Go talk to them." That was when TransCanada "blew a gasket." This is a quote from notes of Mr. Chin: "TC apparently blew a gasket and said, 'We got a deal with the PO. Go talk to them.'" This was on an October 5 meeting. Would that surprise you to know that?

**Ms. Shelly Jamieson:** I did subsequently know that in the spring, but it wasn't on my radar screen at all back then, because I wasn't involved in the file.

**Mr. Victor Fedeli:** We appreciate your being here today. I think certainly we've learned a couple of things from you: number one, that cabinet was well aware that



there were extra costs—you called it different buckets of costs—and that cabinet knew of Project Vapour.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli.

Mr. Tabuns, 10 minutes.

**Mr. Peter Tabuns:** Thank you, Chair.

Ms. Jamieson, were there discussions at your level about cancellation of Mississauga prior to the election?

**Ms. Shelly Jamieson:** Yes.

**Mr. Peter Tabuns:** And how early did those discussions commence?

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**Ms. Shelly Jamieson:** In the spring of 2011, I saw in the news that there was some talk of reviewing the environmental assessment for Mississauga. There were two people in the news speaking to that. I had questions from the Premier's office about certain elements of the Mississauga plant through July and August of that year. They didn't say why they were asking, but my job was to get them the information. I did and—yes.

**Mr. Peter Tabuns:** So for you the decision wasn't totally unexpected, then.

**Ms. Shelly Jamieson:** Unexpected? Well, they didn't make a decision before the writ dropped. There are lots of things that we look at and then they decide not to do something or whatever. So it was in that category of, obviously, they were probably thinking about it and then they decided not to do it. The writ dropped and they could no longer make that decision.

**Mr. Peter Tabuns:** If this matter was coming up in the spring of 2011, before construction started, and frankly, since, to my memory, the company didn't even get financing until May 2011, I think it's logical to assume it would have been a lot less expensive to cancel before they got financing and started construction.

**Ms. Shelly Jamieson:** Likely.

**Mr. Peter Tabuns:** Okay.

Deputy ministers would report to you.

**Ms. Shelly Jamieson:** Correct.

**Mr. Peter Tabuns:** And they would keep you informed of problems and opportunities.

**Ms. Shelly Jamieson:** Good ones.

**Mr. Peter Tabuns:** I'll assume for the moment that the Deputy Minister of Energy was a good one.

**Ms. Shelly Jamieson:** He is; he was.

**Mr. Peter Tabuns:** Did he ever complain that the Ontario Power Authority kept him in the dark about developments?

**Ms. Shelly Jamieson:** No.

**Mr. Peter Tabuns:** So they kept him abreast of what was going on—sorry, the OPA would have kept him abreast on a regular basis?

**Ms. Shelly Jamieson:** I believe they would have, yes.

**Mr. Peter Tabuns:** Okay. Did you yourself have any role in the discussions with TransCanada?

**Ms. Shelly Jamieson:** Directly with TransCanada?

**Mr. Peter Tabuns:** Yes.

**Ms. Shelly Jamieson:** No—not part of my job.

**Mr. Peter Tabuns:** That's fine. I just needed to know.

At one point when TransCanada filed notice that they were going to bring a lawsuit—I think they have to file a 60-day notice prior to bringing a lawsuit. In the correspondence we've seen, we've seen commentary on the need to send out preservation notices to staff. Were you ever aware of that?

**Ms. Shelly Jamieson:** I'm not sure I know what a preservation notice is, so no.

**Mr. Peter Tabuns:** Okay. For what it's worth, it's a notice telling people, "Don't destroy documents. Discovery is coming."

**Ms. Shelly Jamieson:** Well, we don't—anyway. I certainly knew there was intent to litigate, and in my office and throughout government we would have been aware—on both of these files I thought that we would either end up in court or before a standing committee.

**Mr. Peter Tabuns:** One out of two. Not bad.

**Ms. Shelly Jamieson:** I'm proud to live in a province that would review decisions like this. This is the right thing to do, to have this discussion.

**Mr. Peter Tabuns:** Have you been involved in lawsuits previously?

**Ms. Shelly Jamieson:** Yes.

**Mr. Peter Tabuns:** And you know the importance of preserving documents.

**Ms. Shelly Jamieson:** I do.

**Mr. Peter Tabuns:** At the time that notice was given by TransCanada, were staff informed that they should be preserving documents?

**Ms. Shelly Jamieson:** When we receive notice of litigation, there is a process within government that actually makes sure that we're protecting the records that are necessary in the civil service, and that would have happened. I never heard it called a preservation notice, to be honest, but I'm confident that we would have done what we were supposed to do to get ready for litigation.

**Mr. Peter Tabuns:** And so you would have just informed civil servants rather than political staff?

**Ms. Shelly Jamieson:** Correct—of the preservation notice?

**Mr. Peter Tabuns:** Of the need to preserve records.

**Ms. Shelly Jamieson:** Yes, that's correct.

**Mr. Peter Tabuns:** You were aware, though, at that point, that political staff have been deeply involved in this, and you'd screened them all?

**Ms. Shelly Jamieson:** Yes, I had them interviewed. I had the people who were screened interviewed by crown attorneys for the purpose of getting ready for litigation and I had them turn over their notes.

**Mr. Peter Tabuns:** Were those interviews by crown attorneys retained?

**Ms. Shelly Jamieson:** They're in the legal opinion, which I believe has been released to this committee.

**Mr. Peter Tabuns:** The one that was most recently provided to us by Peter Wallace?

**Ms. Shelly Jamieson:** Correct. That's a legal opinion that I asked for, and it's because of the screening and the need to understand where we were, because it looked

like, as a result of that notice, we were headed for litigation.

**Mr. Peter Tabuns:** And so you've been involved in lawsuits. You understand the need to preserve records.

**Ms. Shelly Jamieson:** I do, yes.

**Mr. Peter Tabuns:** Destruction of records would damage Ontario's prospects in a lawsuit?

**Ms. Shelly Jamieson:** Yes.

**Mr. Peter Tabuns:** Thank you. Were you aware that the government directed an offer from the Ontario Power Authority to TransCanada to settle all this in April 2011?

**Ms. Shelly Jamieson:** Sorry, could you repeat that question? Who?

**Mr. Peter Tabuns:** Sorry. The Ontario Power Authority made two offers to TransCanada to settle. They made one that was rejected. Then, according to the notes I've written, they were told by the government to submit another, which was also rejected. Were you aware of the government's direction to OPA to send in a second settlement offer?

**Ms. Shelly Jamieson:** I would say that at a very high level I was aware of that, because this is before we took over the coordination of this effort. I recall Deputy Minister David Lindsay keeping me abreast of these things: "How's that going?" "They've made an offer." But I wouldn't know the details of the offer or necessarily where the direction came from; just that OPA was proceeding to try and reach a settlement with TransCanada.

**Mr. Peter Tabuns:** When those offers failed and the notice of pending litigation was sent, did you meet with the Premier to discuss why things failed and what the next steps were going to be?

**Ms. Shelly Jamieson:** I met with the chief of staff, Chris Morley, to discuss all of that. I don't remember which came first, me saying, "Here's this notice of litigation," or him saying, "We would like you to coordinate a group to see what we can do about this." I believe those things happened at the same time and we had a discussion, and it is from that meeting that I went away and asked David Livingston to be involved, etc.

**Mr. Peter Tabuns:** When David Livingston was brought in, he has said to us that he was briefed by you and two others. Can you tell us (a) what you told him at that briefing, and (b) was he given any written material in that briefing?

**Ms. Shelly Jamieson:** He was not given written material from me, because it was a phone call. I called him and asked him—I said, "I need some help with something," and he said, "I'll do anything." I think perhaps he's wishing he hadn't said that. I said, "Well, wait and listen to what it is." I said, "I need help joining our team, and I need a forward-facing person, an outward-facing person, to deal with TransCanada. The situation is that negotiations between the OPA and TransCanada have failed, and the relationships aren't good. We think we need a new face and a new approach, and we're trying to see what we can do to bring this to ground and settle this."

It went on a little longer than that, but not much longer. David accepted. I asked him to spend an intensive three-week period—we knew we only had a certain period of time—and he flew back and forth to Calgary and worked with us. He actually suspended his work at Infrastructure Ontario to take this on at my request.

**Mr. Peter Tabuns:** And was he given any background on the two failed offers?

**Ms. Shelly Jamieson:** Yes. I asked him to go and speak to the Deputy Minister of Energy to get what he needed to know.

**Mr. Peter Tabuns:** And to your knowledge, did the deputy minister brief him?

**Ms. Shelly Jamieson:** I'm sure he briefed him, yes.

**Mr. Peter Tabuns:** One thing that has been clear in reading the Ontario Power Authority's emails on the arbitration agreement that was ultimately put in place was an awful lot of complaints that the OPA was handcuffed, that—

**The Chair (Mr. Shafiq Qaadri):** About a minute.

**Mr. Peter Tabuns:** Their defence is that this plant was in trouble and couldn't be put into the arbitration agreement, couldn't be recognized. Were you aware of their objections?

**Ms. Shelly Jamieson:** Yes.

**Mr. Peter Tabuns:** And why were they not included in the arbitration agreement?

**Ms. Shelly Jamieson:** By the time we got to the summer of 2011, I would say no one was getting what they wanted, which is actually typically what happens in negotiations. There were complaints from different parties about where we were at. It wasn't going to be perfect. We were just working our way through.

I feel that everybody got a chance to say, at my table, what they were concerned about. My deputy colleagues—the deputy of finance was concerned about the cost. Deputy Lindsay was concerned about signatories to agreements. The OPA was concerned about ratepayers versus taxpayers. Everybody had a concern.

Our job was to try and marshal all of those and proceed with some backup, should a negotiated deal not be—

**Mr. Peter Tabuns:** So the highest priority—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns. To Mr. Delaney: 10 minutes.

**Mr. Bob Delaney:** Thank you, Chair. Shelly, you've been describing negotiations that, to understate it a little bit, would be complex and difficult.

**Ms. Shelly Jamieson:** They were.

**Mr. Bob Delaney:** Okay. In your view, what would it have meant for the Ontario taxpayer if the OPA and the province's negotiating position was prejudiced because the other side, during the negotiations, had access to confidential and privileged information?

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**Ms. Shelly Jamieson:** Well, it would have harmed the negotiations for sure. Nobody likes to negotiate and have all their paper about what they're talking about out before the conclusion of the deal. It's just not good practice in



terms of negotiating a deal. Sometimes in our bid to publicly disclose things, we actually hurt ourselves. So I would have been concerned about that in any negotiation.

**Mr. Bob Delaney:** What specific concerns do you recall being raised about the other party having privileged and confidential information from the province?

**Ms. Shelly Jamieson:** I wasn't here at the time. I apologize. But I was concerned as a taxpayer.

**Mr. Bob Delaney:** So let me put it another way: From your vantage point of having been the senior member of the Ontario public service, would it be reasonable to assume that given the access of privileged and confidential information, the other side would have tried to get a higher settlement if they knew what the government's and the OPA's position was?

**Ms. Shelly Jamieson:** Well, I would just say that if I were the other side, I would find it useful to see what was going on. I don't know where they were at at that stage in the negotiation, so I can't even speak to when the requests came and when they came out, but I wouldn't want—it's really tough to negotiate complicated deals. You need to actually line up your best chance at a good deal. Your best chance includes having one spokesperson at the table and being able to have at least the same privileges as the other side has.

**Mr. Bob Delaney:** It would then be accurate to call that a significant risk to the taxpayer.

**Ms. Shelly Jamieson:** I would think so, yes.

**Mr. Bob Delaney:** In terms of the Oakville plant, just remind me again: When was it announced that the plant would not go forward?

**Ms. Shelly Jamieson:** October 7, 2010, by letter from the minister to the OPA.

**Mr. Bob Delaney:** There was a document provided to the committee last week by Secretary Wallace. He was asked for documentation that showed who attended a July 27 cabinet meeting regarding the Oakville relocation negotiations. You've just told us the Oakville cancellation was announced in October 2010, so that document, which was, I believe, requested by Mr. Fedeli, related to a meeting that took place more than eight months after the public announcement that the Oakville plant wouldn't be built.

**Ms. Shelly Jamieson:** Correct.

**Mr. Bob Delaney:** Now, a draft version of this cabinet submission has already been turned over in the 56,000 documents disclosed by the Ministry of Energy and the OPA. The documents did not include the cabinet final minute or the signatures, and the opposition then alleged that the ministry withheld the full document. But based on what you've been saying, my understanding is that while ministries are responsible for drafting cabinet submissions, it's the executive council—

**Ms. Shelly Jamieson:** Correct.

**Mr. Bob Delaney:** —that prepares these briefings. By extension, it would have been for Cabinet Office staff to coordinate and keep records of such—what are they called, walk-around items?

**Ms. Shelly Jamieson:** Exactly. That would be the responsibility of my office. It might not even have been known by a ministry whether something went to a full cabinet meeting versus the walk-around. The machine is our responsibility, not the ministry's responsibility.

We would advise them after a walk-around had been completed. That is true; we would tell them afterwards. They would likely have been involved in preparing the information. I can't think of an instance where they wouldn't have known that this had happened. We walked around, we would get the signatures, and that is our mechanism for making sure we know the decisions of cabinet.

Walk-arounds—we like them to be rare, but they end up being more frequent because of timing etc.—are reported into the next full cabinet meeting so that cabinet is aware as a whole that a walk-around has occurred on a specific item.

**Mr. Bob Delaney:** So to encapsulate that, the document that we're discussing wouldn't have been responsive to the original motion, which was just correspondence from the Minister of Energy, the Ministry of Energy and the OPA.

**Ms. Shelly Jamieson:** That's correct.

**Mr. Bob Delaney:** Just a question of clarification on Mr. Livingston's involvement in the Oakville negotiations. What area of expertise was it that prompted you to ask him to assist in that?

**Ms. Shelly Jamieson:** I sat down and thought about four or five people who I thought could assist us in this regard. I had in my view—I wanted the deputy of finance, the deputy of energy and the deputy Attorney General on my team. I wanted somebody else who had the time and energy. The people I just mentioned have extremely busy day jobs and other things to do other than this file. I wanted someone who would dedicate themselves over the next few weeks to determining if there was a deal to be had and what it might look like to avoid litigation.

When I thought about people, I thought about someone who has the gravitas necessary to actually speak to the CEO of TransCanada. David Livingston comes to us from the private sector, but also in his job at Infrastructure Ontario, was used to dealing with publicly traded companies and understands that world and can present himself in that way. So I suggested to Chris Morley, the Premier's chief of staff, that I would like David Livingston to join the team for this purpose. He agreed, and I asked David.

**Mr. Bob Delaney:** Okay. A few concluding questions, mostly about the implementation of campaign commitments: During the writ period, does the OPS engage in a little process of preparing for an incoming government?

**Ms. Shelly Jamieson:** We do.

**Mr. Bob Delaney:** Okay. Would you keep an eye on various campaigns and the commitments being made?

**Ms. Shelly Jamieson:** We do. We track them.

**Mr. Bob Delaney:** So then it's accurate to say that the OPS is following an election tasked with helping the winning party implement their campaign commitments?

**Ms. Shelly Jamieson:** Yes, whoever they are.

**Mr. Bob Delaney:** So there's nothing unusual about a process where a political party makes commitments during a campaign and then that commitment is implemented by that party, with the help of the OPS, once they're elected.

**Ms. Shelly Jamieson:** Correct.

**Mr. Bob Delaney:** Thank you very much, Chair. We're done.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Ms. Jamieson, for your testimony today, as well as your tenure in the Ontario public service. You are officially dismissed.

**Ms. Shelly Jamieson:** Thank you.

**The Chair (Mr. Shafiq Qaadri):** Mr. Leone?

**Mr. Rob Leone:** Just to put a bug in the committee's ears, I understand that we're not going to have a 4:30 witness today. I'm just hoping that in the future we can try to minimize those occurrences. I'd like to have, to the greatest extent possible, a full slate of witnesses before us. So I'm happy to engage in a discussion with all parties on how we can best achieve that goal. I don't wish to engage in that discussion right now, necessarily, but if we could think about ways in which we do that, that would be good.

**The Chair (Mr. Shafiq Qaadri):** Just for the record, four witnesses provided by the government were all basically unavailable. So that's what happened, as I understand it.

**Mr. Bob Delaney:** Rob, it wasn't intentional.

**Mr. Rob Leone:** I know.

**The Chair (Mr. Shafiq Qaadri):** Fair enough.

So committee is recessed until 3 p.m. today.

*The committee recessed from 1007 to 1501.*

MS. KRISTIN JENKINS

**The Chair (Mr. Shafiq Qaadri):** Chers collègues, j'appelle à l'ordre cette séance du Comité permanent de la justice.

As you know, we're here to hear energy infrastructure issues with reference to the gas plants. I would invite our first witness to please come forward: Ms. Kristin Jenkins, vice-president of communications, Ontario Power Authority—OPA—who will be affirmed momentarily.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Do you solemnly affirm that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth?

**Ms. Kristin Jenkins:** I do.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Ms. Jenkins. I would invite you to begin your introductory remarks. Five minutes.

**Ms. Kristin Jenkins:** Good afternoon. I am Kristin Jenkins, and I'm the vice-president of communications at

the Ontario Power Authority. I report to Colin Andersen, OPA's CEO, and I'm a member of our executive team.

I have a master's degree in political science from Carleton University and another master's in health administration from the University of Toronto. I was political staff in Bob Rae's government from 1993 to 1995. Since then, I've held a number of communications and public affairs positions, primarily with government agencies.

Prior to August 22, 2012, my role in the disclosure of the power plant documents was limited to communications and issues management.

On August 22, Mike Lyle, the OPA's general counsel, asked me to go to the Ministry of Energy with Ziyaad Mia, one of OPA's lawyers. I was told that Halyna Perun, the ministry's director of legal services, had arranged an urgent meeting for Jesse Kulendran to go over issues the ministry had with our non-privileged Oakville documents. Ms. Perun asked Ziyaad Mia to bring a copy of these documents to the meeting. Notes of Ziyaad's conversation with Ms. Perun are included in the package that I circulated to the committee.

Earlier, in May 2012, OPA legal staff had searched and reviewed our gas plant documents to comply with the estimates committee's request. No outside firm was involved in this work. In early August, the law firm advising us on the gas plant negotiations assisted in separating the Oakville privileged from the Oakville non-privileged documents.

The two-hour meeting with Ms. Kulendran took place at 10 a.m. in the deputy minister's office. She told us that the ministry was using a strict interpretation of the wording of the estimates committee motion and that this had been discussed with ministry freedom-of-information staff. She then told us how the ministry was specifically reviewing its documents to comply with the motion.

She told us that a number of our documents were not consistent with the ministry's approach, that we should use the approach described and that a new set of documents needed to be resubmitted to the ministry by 5 p.m. that day.

We were not told that these were simply observations or that they were from the minister's office. Ziyaad and I made notes of this discussion, and copies are in your package.

Ziyaad and I did not commit to anything at the meeting, and we told Ms. Kulendran that Colin Andersen's approval was required.

At the request of Ms. Kulendran, she and Ziyaad went through the documents page by page and applied the ministry's approach. I sat across the table and wrote the reasons for excluding the documents on Post-It Notes. As Ms. Kulendran testified on April 4, the Post-It Notes reflect the conversation we were having at that time. I have these documents with me today.

Prior to the August 22 meeting, the minister's office had asked me about communications materials, so at the meeting I told Ms. Kulendran that our documents had not yet been reviewed for communications purposes and that



I did not have any communications materials developed. At the meeting, we did not discuss the specific search terms the OPA used in May, did not tell Ms. Kulendran that an outside firm had searched our documents, and did not say that our documents had not yet been reviewed for relevancy.

After the meeting, Ziyaad and I met with Colin Andersen and Mike Lyle. As Mr. Andersen said at his news conference in February, the OPA felt being consistent with the ministry on the document request was important. Given that Ms. Kulendran had told us that this was the ministry's approach and that it had been discussed with ministry FOI staff, and the fact that the ministry's director of legal services had arranged the meeting with Ms. Kulendran for the specific purpose of discussing the ministry's issues with our documents, the OPA decided to proceed as Ms. Kulendran had directed and we resubmitted the documents to the ministry at 5 p.m.

Over the next 48 hours, OPA staff applied what we were led to believe was the ministry's approach to privileged Oakville and Mississauga documents. On August 24 at 7:30 p.m., 10 boxes were delivered to Ms. Kulendran and Andrew Forgione, a staff person from Minister Bentley's office.

The OPA disclosed about 27,000 pages of documents on September 24. On September 27, we determined that we likely had more documents to disclose. On October 2, Colin Andersen told me and Mike Lyle that the approach that Ms. Kulendran had told us to use was not in fact what the ministry had been using. I wrote a memo to Colin Andersen on October 3, 2012, to reconfirm what I had consistently been communicating verbally and in writing about the August 22 meeting. This included a memo from September 25, which is included in your package.

On top of carrying out additional searches, applying additional search terms and adding more employees to the searches, we then went back and reviewed the documents we had left out based on the August 22 meeting. Through all this work, about 14,000 pages of documents relevant to the May 16 motion were disclosed on October 12.

This was the first time I was involved in document disclosure. What I have learned is that large-scale document disclosures create challenges for organizations, and that the OPA was no different. Throughout this process, however, my colleagues and I made best efforts to comply and the OPA has disclosed over 40,000 pages of documents responsive to the estimates committee's request.

Thank you, and I am now happy to take your questions.

**The Chair (Mr. Shafiq Qaadri):** Thank you very much. We'll move to the NDP. Mr. Tabuns, you have 20 minutes.

**Mr. Peter Tabuns:** Thank you, Ms. Jenkins. Why did you write the memo to Colin Andersen on October 3 telling him that you'd been asked to exclude documents?

**Ms. Kristin Jenkins:** I wrote the memo to Mr. Andersen on October 3 to confirm what I had said to him verbally and in writing previously about the meeting with Ms. Kulendran.

**Mr. Peter Tabuns:** And what prompted you to talk to him about that meeting with Jesse Kulendran?

**Ms. Kristin Jenkins:** On October 2, the Deputy Minister of Energy had informed Colin Andersen that the approach that we were using to screen our documents was not in fact the approach that the Ministry of Energy was using.

**Mr. Peter Tabuns:** Can you tell us—you've just gone through and told us in fact about the meeting on August 22, 2012, with Jesse Kulendran. Did you have a box of documents and did she have a box of documents? Her description to us was there was about half a banker's box worth of material.

**Ms. Kristin Jenkins:** My colleague Ziyaad Mia, who had been invited to the meeting by the ministry's head of legal services, brought a copy of the OPA's non-privileged Oakville documents to the meeting. These are the documents here that we brought to the meeting.

**Mr. Peter Tabuns:** Okay, and was there another set of documents or a copy of those documents brought by Jesse Kulendran?

**Ms. Kristin Jenkins:** Yes.

**Mr. Peter Tabuns:** She kept those, and as she said to us, she annotated those documents. Did you see her annotate the documents as you went through?

**Ms. Kristin Jenkins:** I can't specifically recall that, but that is completely possible that she did that.

**Mr. Peter Tabuns:** The exclusions: Was there any pattern as to why one document was being excluded over another?

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**Ms. Kristin Jenkins:** There's a description in the package that I circulated to the committee—

**Mr. Peter Tabuns:** Which tab is that?

**Ms. Kristin Jenkins:** Tab 10.

As I said in my opening remarks, Ms. Kulendran told my colleague and I that the ministry was using a strict interpretation of the wording of the estimates committee motion. Essentially, the three things that she told us were that the documents needed to be correspondence, that they needed to fall within the dates of the motion, and that the correspondence needed to mention Oakville or Mississauga in the correspondence itself; otherwise, the correspondence and any attachments to that correspondence were to be excluded, even if the attachments mentioned—the test was that the correspondence must mention the cancellation of the Oakville and Mississauga power plants.

The other thing we were told at the meeting was that "SWGTA" or "southwest GTA" was not to be considered as a proxy for Oakville—and again, that this was the approach that the ministry was using and that it had been discussed with ministry FOI staff.

**Mr. Peter Tabuns:** Were you asked in that meeting to not discuss any of this with anyone else once the meeting was finished?

**Ms. Kristin Jenkins:** No, we were not.

**Mr. Peter Tabuns:** Did you challenge her on her interpretation of how documents were to be produced?

**Ms. Kristin Jenkins:** No, we did not. We went to the meeting to listen. The meeting was called very urgently. I was pulled out of another meeting at 20 to 10, and I was in that meeting at 10 a.m. We weren't sure, because it was scheduled at the last minute, what to expect and had decided prior to going to the meeting that we would listen and come back to the OPA and speak to our general counsel and CEO.

**Mr. Peter Tabuns:** Had you dealt with Jesse Kulendran in the past?

**Ms. Kristin Jenkins:** Yes, many times.

**Mr. Peter Tabuns:** Who did she say she was representing when she met with you?

**Ms. Kristin Jenkins:** Ms. Kulendran's position at the time was in the deputy minister's office, and we assumed that she was representing the ministry. As I said, the instructions that she provided to us were held out as the ministry's approach for screening the documents.

**Mr. Peter Tabuns:** As you're now aware, obviously, this approach is not one that was envisioned by this committee. The criteria that were put before you were far too narrow to capture the documents that we expected to have brought before us. Did Jesse Kulendran explain why there was such a narrow interpretation?

**Ms. Kristin Jenkins:** She said—my notes, which are also in your package in tab 3, was that the ministry was using a strict interpretation of the wording of the motion and that it had been discussed with ministry FOI staff.

**Mr. Peter Tabuns:** Did she ever indicate she was working on behalf of the Premier's office or anyone in the Premier's office?

**Ms. Kristin Jenkins:** No.

**Mr. Peter Tabuns:** When you were finished your meeting with Jesse Kulendran, you took these criteria and those were applied to the larger or fuller search for OPA documents. Is that correct?

**Ms. Kristin Jenkins:** Yes. When we finished the meeting, my colleague and I went back to the Ontario Power Authority and briefed the CEO and our general counsel, and subsequent to that, Colin Andersen made the decision that the OPA would proceed based on the instructions that Ms. Kulendran had presented to us. She had told us that they were the approach that the ministry was taking, and the fact that the head of legal had set up the meeting and we knew that the legal department at the ministry was leading the document disclosure—those were largely the reasons that I'm aware of, based on which Mr. Andersen made the decision to go ahead.

**Mr. Peter Tabuns:** Which legal counsel was present with Colin Andersen when he was briefed by you?

**Ms. Kristin Jenkins:** My colleague who was at the meeting, Ziyaad Mia, is an in-house lawyer for the OPA; and Mike Lyle, our general counsel.

**Mr. Peter Tabuns:** Did you get any pushback from them on this interpretation?

**Ms. Kristin Jenkins:** I didn't take any notes in that meeting, and I don't recall the specific discussion that took place.

**Mr. Peter Tabuns:** Okay. Had you had other interactions with Jesse Kulendran prior to this meeting?

**Ms. Kristin Jenkins:** Yes.

**Mr. Peter Tabuns:** Can you characterize those interactions?

**Ms. Kristin Jenkins:** When I first started working at the OPA, Ms. Kulendran worked in communications and issues management, so it was often around news releases, Q&As, key messages on key issues. Then when she moved into the deputy minister's office, it would be on issues that were generally high-profile. Just prior to the estimates committee, it would have been the feed-in-tariff review. Prior to that, the OPA had updated the IPSP, and it would have been around that. Those would have been the most recent previous interactions with Ms. Kulendran.

**Mr. Peter Tabuns:** When she was here, she told us, "I did not direct the" OPA "to exclude documents. I do not have the authority...." I "acted in good faith."

Can you explain why she made those comments to this committee?

**Ms. Kristin Jenkins:** I can't explain why Ms. Kulendran made those comments to the committee. Ms. Kulendran gave us instructions and asked us to use them. The OPA decided, based on the fact that they were presented to us as the Ministry of Energy's approach to screening the documents, and for the reasons I've outlined previously, to go ahead and to rescreen our documents based on the instructions that we received from Ms. Kulendran.

**Mr. Peter Tabuns:** Tell us again when you realized that what you were doing was actually out of sync with what the Ministry of Energy was doing.

**Ms. Kristin Jenkins:** Colin Andersen told me and Mike Lyle on the afternoon of October 2 that he had just learned that the approach that we were applying to the documents was not in fact the approach that the ministry had been applying and that he'd found this out through the deputy minister, Serge Imbrogno.

**Mr. Peter Tabuns:** Serge Imbrogno indicated to us that he had received a call from Colin Andersen about an allegation of interference with document preparation. Can you tell us about those discussions you had with Colin Andersen when you pointed out to him that you were acting as directed by Jesse Kulendran?

**Ms. Kristin Jenkins:** When Mr. Andersen found out from the deputy that the approach we were using was not what the ministry had been using, he asked me and Mike to again go over what had gone on in the previous month, which I said I would be happy to do—to go back to review my notes and speak to my colleagues. Then I wrote the October 3 memo.

**Mr. Peter Tabuns:** What were the consequences for you of having written that memo on October 3?



**Ms. Kristin Jenkins:** There were no consequences.

**Mr. Peter Tabuns:** The whole matter leaves me very puzzled, I have to tell you. These are radically different interpretations of what went on. I've tried for a while to understand what was the goal of the instructions that were given to you. In those materials that you have, was there a pattern in exclusion that related to an aspect of the issue? Was there a pattern in terms of financial information or analysis?

**Ms. Kristin Jenkins:** I've not undertaken that kind of review of the documents. Again, the application of the instructions that Ms. Kulendran provided to us had the effect of excluding what turned out to be responsive attachments to non-responsive pieces of correspondence. In terms of the content of the attachments that were excluded, I have not analyzed to see if there's any kind of pattern.

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**Mr. Peter Tabuns:** Okay. I will be asking, Chair, at the end, for the transfer of those documents from you to the Clerk and a photocopy of the documents that were excluded so we can decide for ourselves if there's any pattern we can see.

**Ms. Kristin Jenkins:** You're asking me to leave the originals, or you're asking me to provide a photocopy?

**Mr. Peter Tabuns:** I would be comfortable with photocopies, but I would like to have the documents that were excluded.

**Ms. Kristin Jenkins:** That shouldn't be a problem. I would remind the committee that earlier in the month our CEO, Colin Andersen, wrote a letter to the committee about how we would like to share documents with the committee. In committing to provide copies, I would like to say that it would be in keeping with Mr. Andersen's letter, and we'd be happy to discuss that with you.

**Mr. Peter Tabuns:** Just so I'm clear, while you're still on the record, what would be different in his instructions from our just having photocopies of everything that got marked?

**Ms. Kristin Jenkins:** There is unrelated information in this, and although it's non-privileged, I can't say for certainty that there's not confidential information in here. Although it's non-privileged information, there could be confidential information. I can tell you that there is information in here that is unrelated to the cancellation of either of the gas plants. Mr. Andersen's letter is in this package. It does set out options for transferring that information to the committee, providing that information to the committee.

**Mr. Peter Tabuns:** Well, I will take this up at the end of this session rather than use up more of my questioning time right now.

Do you recall when you were told that the Mississauga plant would be cancelled?

**Ms. Kristin Jenkins:** Yes. I was told the evening before the plant was cancelled. I'm sorry; I want to rephrase that, please. I was told the evening before the Liberal Party announced as a campaign platform that, if the government was re-elected, the plant would be cancelled.

**Mr. Peter Tabuns:** If I remember, that was on a weekend?

**Ms. Kristin Jenkins:** Yes. I think it was September 23 or 24 that I was told. It was the night before the Liberal Party made the announcement.

**Mr. Peter Tabuns:** Were you aware at that time if the Ontario Power Authority had any internal estimates on the cost of cancellation?

**Ms. Kristin Jenkins:** No, not at that time.

**Mr. Peter Tabuns:** Did you see estimates for the cost of cancellation later?

**Ms. Kristin Jenkins:** Yes.

**Mr. Peter Tabuns:** And when would you have seen them?

**Ms. Kristin Jenkins:** I couldn't give you a specific date, but by some point in the few months after the cancellation probably some estimates—as my colleague JoAnne Butler testified a couple of weeks ago, there would have been initial cost estimates, and as more information became available, they would have become more certain. Then other costs would have been factored in as well.

**Mr. Peter Tabuns:** We had the opportunity yesterday to hear the Minister of Energy talk about the cost that has been determined for cancellation, a cost determined by the Auditor General. There was some implication that the OPA was derelict in explaining fully to ministerial staff or even the minister what the costs were going to be. Have you got any evidence to support or refute that allegation?

**Ms. Kristin Jenkins:** There would have been communication with the Ministry of Energy throughout the negotiation process. That would have included information shared about costs, and that would have happened throughout the process, as I said, and leading up to the signing of the agreement in July 2012. As we were looking, with our colleagues in the ministry, at potential sites, the costs of alternative sites would have been factored into the decision-making and into that process.

**Mr. Peter Tabuns:** Were you ever briefed on the full costs of cancelling the Oakville and Mississauga plants?

**Ms. Kristin Jenkins:** When the announcement was made on the Mississauga plant, I had gone on vacation just shortly before the transaction was finalized and didn't return for several weeks after. When I came back at the beginning of August, I would have reviewed the materials, primarily communications materials, that the government had put out during that time period.

With respect to TransCanada, on the 24th of September, an MOU was announced between the OPA, the government and TransCanada. So, yes, I was briefed on that and I did participate in developing the communications materials that went out on the 24th, when we posted the MOU, etc.

**Mr. Peter Tabuns:** Were there internal discussions at that time that there were costs beyond the sunk costs, the \$40 million that had been discussed?

**Ms. Kristin Jenkins:** Yes, the gas management and delivery costs, and then there were also discussions



around the—certainly on the day, I knew, because it's reflected in our communications materials and it's in the MOU, the gas management and delivery charges. Then there were discussions around the transmission costs, as well as connections at the site, connecting the new facility to the grid.

**Mr. Peter Tabuns:** On March 19, in testimony here, your colleague JoAnne Butler said the government would have been aware, given that they signed the memorandum of agreement, that these costs were going to be on the government's shoulders. Would that be your impression? The government would have understood the scale of what they were signing off on?

**Ms. Kristin Jenkins:** Yes, I agree with what JoAnne has said, and I would just make sure that it's clear that at the time that the MOU was signed, the exact quantum of those costs was not known. Some of them, as JoAnne pointed out, are still to be determined because they require engineering and design work, but certainly that there were these categories of costs would have been known in September when the MOU was concluded.

**Mr. Peter Tabuns:** Okay.

**The Chair (Mr. Shafiq Qaadri):** About one minute.

**Mr. Peter Tabuns:** You were involved in producing a considerable amount of media material. Did you ever produce a question-and-answer on costs?

**Ms. Kristin Jenkins:** Probably, but off the top of my head I can't recall.

**Mr. Peter Tabuns:** All right. Do you believe that the OPA has not been open and forthcoming with the government, with the Minister of Energy, about the costs of these cancellations?

**Ms. Kristin Jenkins:** I believe that the OPA has been forthcoming and open about the costs of the cancellations.

**Mr. Peter Tabuns:** Okay. Thank you.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns. Mr. Delaney, 20 minutes.

**Mr. Bob Delaney:** Okay. Thank you very much, Chair. Good afternoon, Kristin. Welcome.

**Ms. Kristin Jenkins:** Thank you.

**Mr. Bob Delaney:** I just want to start with a quick recap. Can you recall which members you worked for while you were here at Queen's Park, prior to joining the civil service?

**Ms. Kristin Jenkins:** I worked for Ruth Grier when she was Minister of Health.

**Mr. Bob Delaney:** Okay. And then from there straight into the civil service?

**Ms. Kristin Jenkins:** No. I worked at the Ontario Medical Association before going to Cancer Care Ontario.

**Mr. Bob Delaney:** Okay. Well, clearly you're not the first person to step from working for an elected member into a more neutral role within either a government agency or a private company, so I guess we could characterize that as fairly common?

**Ms. Kristin Jenkins:** Yes.

**Mr. Bob Delaney:** Yes, okay. Following that, into the OPA?

**Ms. Kristin Jenkins:** I worked at Cancer Care Ontario for four years, and then I worked at Waterfront Toronto for about six years. Then I did a short stint at Toronto Community Housing, and joined OPA in 2009.

**Mr. Bob Delaney:** Okay, thank you. In between 2009 and when you became the VP of communications, what were you doing with the OPA?

**Ms. Kristin Jenkins:** I was the director of stakeholder and media relations.

**Mr. Bob Delaney:** Okay. I spent a little bit of time myself in PR prior to being elected. Just so that everybody else understands the jargon that we use, when you're doing stakeholder and media relations, what would that be?

**Ms. Kristin Jenkins:** Responding to media calls, preparing news releases, Q&As, key messages—

**Mr. Bob Delaney:** Right.

**Ms. Kristin Jenkins:** A lot of the work in my department is carried out in coordination with the Ministry of Energy, and a lot of that coordination happens in that particular area.

**Mr. Bob Delaney:** And you went from that to being the VP of communications?

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**Ms. Kristin Jenkins:** Yes.

**Mr. Bob Delaney:** Did your reporting relationship change when you were promoted to the position of VP of communications?

**Ms. Kristin Jenkins:** Yes. I reported to Ben Chin prior to becoming the VP; Ben was the VP. When Ben left, I was promoted, and I now report to Colin Andersen.

**Mr. Bob Delaney:** Right. Okay. Is there anyone else in the reporting relationship?

**Ms. Kristin Jenkins:** To me?

**Mr. Bob Delaney:** Yes, for you.

**Ms. Kristin Jenkins:** Yes. I have a staff of about 20. Three directors report directly to me, and one admin assistant.

**Mr. Bob Delaney:** So, yourself, three directors, one admin assistant, and another dozen and change?

**Ms. Kristin Jenkins:** Another dozen or so staff, yes.

**Mr. Bob Delaney:** Okay. Would it then be the staff in your department who would be responsible for preparing news releases, key messages, Q&As? What other things on a daily basis does the shop produce?

**Ms. Kristin Jenkins:** Maintaining our corporate website, working with our various operating departments around stakeholder relations if we're managing a program such as the feed-in tariff program, new conservation programs, those sorts of things; providing support to the other divisions within the OPA.

**Mr. Bob Delaney:** Okay. A few questions regarding your role in the document search: You've mentioned that you were involved in that document search process, right down to talking about, "What terms are you searching for?" Had you ever done anything like that before?



**Ms. Kristin Jenkins:** First, I'd like to just clarify something. I, in fact, was not involved in the original search that was done on the documents. As I said in my opening remarks, the OPA's documents were searched and reviewed in May 2012, when the estimates committee motion was made. I became involved on August 22, and by that point, our documents had already been searched and reviewed. But to answer your question, no, I have not been involved in a large-scale document disclosure prior to this one.

**Mr. Bob Delaney:** Would it be reasonable to characterize it as very labour-intensive?

**Ms. Kristin Jenkins:** Very labour-intensive and time-consuming.

**Mr. Bob Delaney:** In brief, what type of skills, what type of hours; how did you organize your effort?

**Ms. Kristin Jenkins:** Initially, when I was asked to be involved, it was really to marshal staff. I don't provide advice—I didn't at the time—to our CEO on document disclosure. Following the August 22 meeting, I was asked to make sure that the documents were turned around to the ministry in the timelines that were requested. Most immediately that day were the non-privileged Oakville documents, but we had over 30,000 other pages of privileged documents that needed to have the screen—once we had agreed to apply the screen—applied to them. I had to marshal a number of staff and assist our legal department, who do have the responsibility for document disclosure, to get those documents screened in the 48 hours.

At that point, it was thought that the non-privileged were going to be disclosed on the 24th and that the privileged documents would be disclosed in camera to the estimates committee the following Monday and that we were working towards those deadlines based on the request from the Ministry of Energy.

**Mr. Bob Delaney:** So anybody who has ever tried to lift the boxes knows how much paper that truly is. It's an unprecedented effort. It's a difficult, organizationally complex and fairly tedious process to go through it.

At the same time, the Ministry of Energy was running—would it be fair to call it a parallel process?

**Ms. Kristin Jenkins:** Do you mean reviewing their own—

**Mr. Bob Delaney:** Reviewing its own ministry documents.

**Ms. Kristin Jenkins:** Yes.

**Mr. Bob Delaney:** Okay. What you were trying to do at this point as well was to coordinate with the Ministry of Energy to compare notes and ensure that, to the limit of your ability, the request of the committee was being met?

**Ms. Kristin Jenkins:** Yes.

**Mr. Bob Delaney:** Okay. And it was in that context that you had your meeting with Jesse Kulendran, who was a Ministry of Energy staff person, on August 22?

**Ms. Kristin Jenkins:** Yes. The previous week, our legal department had provided the ministry's legal department with a full set of our Oakville documents. In

July, our legal department had provided the ministry with a few sets of our Greenfield South or Mississauga documents to review.

**Mr. Bob Delaney:** Right. Speaking here at Queen's Park in a news conference, your CEO, Colin Andersen, was asked about that particular meeting between yourself and Ms. Kulendran. His answer was—and I'll use his words—"It's natural that we compare notes on what we are doing." Would you agree with Mr. Andersen that it was important to—and I'll use his words—"compare notes" to make sure that the ministry and the OPA were following a similar approach to respond to the request?

**Ms. Kristin Jenkins:** Yes, I do agree with that.

**Mr. Bob Delaney:** Okay. Would that be an accurate description of the purpose of your meeting on August 22, that you were there so you could share your observations made during your respective searches?

**Ms. Kristin Jenkins:** No, I don't agree that that was the purpose of the meeting. The meeting was called very urgently by the Ministry of Energy for the Ministry of Energy to share their issues, to let us know the issues that they had with our documents. The Ministry of Energy did not share their documents with us until just before the disclosure on September 24. I believe we received the ministry's documents as a courtesy a few days—maybe on the 20th or the 21st. But we didn't come to that meeting to provide comments to the ministry.

**Mr. Bob Delaney:** To talk about that meeting again in a little bit more detail, do you know who arranged it?

**Ms. Kristin Jenkins:** Halyna Perun, the director of legal services at the Ministry of Energy. She contacted our general counsel, Mike Lyle. Mike Lyle asked one of his lawyers, Ziyaad Mia, to follow up with Ms. Perun, and then I was asked to attend; Mike Lyle asked me to attend the meeting with Ziyaad.

As I said, it happened very quickly. I was in another meeting at 9:30 and was in the deputy minister's office at 10.

**Mr. Bob Delaney:** Yes, you have described throughout a process where you had a lot of work to do and you had to do it very quickly, so we understand the efforts that you made.

Do you recall who was in attendance at the meeting?

**Ms. Kristin Jenkins:** Myself, Ziyaad Mia and Ms. Kulendran.

**Mr. Bob Delaney:** So some relatively senior OPA officials and Ms. Kulendran.

**Ms. Kristin Jenkins:** That's correct.

**Mr. Bob Delaney:** I guess you're aware that Ms. Kulendran has already been here to testify before the committee. In her testimony, Ms. Kulendran said that in the meeting, you were reviewing documents that had been flagged as potentially non-relevant. Just one more time, would you give us some examples of some of the types of documents—you don't have to tell us what was in them—that might have been flagged as non-responsive?

**Ms. Kristin Jenkins:** There's a document that contains all of the transition briefing notes that the OPA



prepared after—it wouldn't have been; I'm mixing up Mississauga. It would have been after one of the changes, a cabinet shuffle. Because all of the files were saved as one Word document, there are a number of briefing notes, including notes on Mississauga and Oakville; but because they were all contained in one document, all of the briefing notes were in the package, so those other briefing notes would not be relevant.

**Mr. Bob Delaney:** In other words, pretty common-sense stuff. And if it didn't respond to the request, then it wasn't part of what you had disclosed.

**Ms. Kristin Jenkins:** Yes. And when the OPA had screened its documents in May—my colleagues had gone through the documents in May and screened them for relevancy—it was missed.

**Mr. Bob Delaney:** Okay. You described earlier that you report to Mr. Andersen, so I think it's very clear, then, that you don't report to Jesse Kulendran.

**Ms. Kristin Jenkins:** No.

**Mr. Bob Delaney:** Nor did she have any line authority over you at the time of that August 22 meeting.

**Ms. Kristin Jenkins:** No.

**Mr. Bob Delaney:** The Deputy Minister of Energy, Serge Imbrogno, stated that Ms. Kulendran—again, I'll use his words—"was in a capacity of coordinating. She wasn't in a capacity of" providing direction. Ms. Kulendran herself told the committee, "I did not have the authority to direct the OPA." Based on what you've told us so far, that seems accurate?

**Ms. Kristin Jenkins:** It's factually correct. There's only one person who has the authority to direct the OPA, and that's with a capital D, and that's the Minister of Energy.

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**Mr. Bob Delaney:** Okay. In the memo that you wrote on October 3, you seem to suggest, and perhaps you can clarify this, that Ms. Kulendran somehow—the word that you used in the memo was "directed" the OPA. How was it possible for Ms. Kulendran to direct senior OPA officials?

**Ms. Kristin Jenkins:** As I've said previously, Ms. Kulendran instructed, directed, told us that we should be following the same approach as the ministry. She presented that approach. We took it back to the OPA and Colin Andersen made the decision to follow Ms. Kulendran's direction.

When JoAnne Butler was here, there were a number of questions asked of her around a second counter-offer that the OPA made to TransCanada. The government asked us to make that counter-offer. They told us that—they set an expectation. The OPA board of directors agreed to do that.

**Mr. Bob Delaney:** What I'm trying to clarify here, and I think you're helping in this regard, is that I know that neither you nor Ms. Kulendran intended to either mislead anyone or leave the wrong impression. But in your memo where you used the word "direct"—I'm just trying to clarify here—Ms. Kulendran could not direct you to exclude anything.

**Ms. Kristin Jenkins:** Ms. Kulendran gave us instructions on how to screen the documents, told us that it was the ministry's approach and set an expectation that the OPA would follow it. We took that back to Colin Andersen and our general counsel. Ms. Kulendran had also told us that the approach had been discussed with ministry FOI staff and the head of legal at the ministry had set up the meeting. For those reasons, and potentially others, Mr. Andersen decided to proceed as Jesse had asked us to do.

**Mr. Bob Delaney:** In the end, though, the decision to disclose what was responsive and what needed to be disclosed was made by the OPA?

**Ms. Kristin Jenkins:** Yes.

**Mr. Bob Delaney:** Okay. When you described that process, earlier you used the words "strict interpretation" in your evaluation. What did "strict interpretation" mean?

**Ms. Kristin Jenkins:** Based on what was presented to us in the meeting, if you go back to tab 10 and the instructions that Ms. Kulendran provided us, I would say that I took, based on the context that she provided, a strict interpretation of the wording of the motion. It would really be these three points: It has to be correspondence, so it couldn't just be a document, it would have to be correspondence; it had to fall within the dates of the motion; and it had to mention the words "Oakville" or "Mississauga power plant" in the correspondence. If it didn't, then everything was to be excluded, including attachments to the correspondence. That's what I took to be the strict interpretation of the wording of the motion.

**Mr. Bob Delaney:** In other words, it was neither your intent nor in your experience the ministry's intent to withhold anything, but to make sure that both the OPA and the ministry were trying to do the same thing in the same way.

**Ms. Kristin Jenkins:** I agree that the OPA felt that it was very important that the OPA and the ministry be consistent in the approach that they were applying to disclosing the documents that were requested by the estimates committee.

**Mr. Bob Delaney:** I'm going to take that as a yes.

Who formally provided the Clerk with the final documents in all three OPA disclosures?

**Ms. Kristin Jenkins:** The OPA, OPA staff. Mike Lyle provided the documents to the Clerk in the July disclosure, then the two subsequent disclosures in the fall I believe were from a staff person from my department.

**Mr. Bob Delaney:** After hearing what you've said, then, I think this is clear. I'm sorry if I seem to be beating this to death; I think this is something we'd just like to make very clear. The OPA was responsible for their own document search. They had the final signoff, and they provided them to the Clerk.

**Ms. Kristin Jenkins:** That's correct.

**Mr. Bob Delaney:** Thank you. How am I doing on time, Chair?

**The Chair (Mr. Shafiq Qaadri):** About 2.5 minutes.

**Mr. Bob Delaney:** A couple of questions that describe the process a bit more generally. In his news conference,



Mr. Andersen emphasized that everyone at the OPA was working really hard—and again I'm going to use his terms—to get it right. So, from what we've heard from witness after witness, the ministry and the OPA acted in good faith to comply with the motion for documents. Would you agree?

**Ms. Kristin Jenkins:** I can say that, yes, the OPA applied best efforts, acted in good faith to comply with the motion.

**Mr. Bob Delaney:** So after the initial search, when you saw that search terms were missed which resulted in additional documents being disclosed to the committee—for example, in his letter to the Clerk on October 12, 2012, after the second disclosure of documents, Colin Andersen wrote, “It was always our intention to provide all responsive records and respect the ruling of the Speaker.” Would you agree with that?

**Ms. Kristin Jenkins:** Yes.

**Mr. Bob Delaney:** Okay. Chair, time?

**The Chair (Mr. Shafiq Qaadri):** About 1.4 minutes.

**Mr. Bob Delaney:** Okay. I can get a couple more of these in, then.

In this letter, Mr. Andersen goes on to apologize to the committee and the Legislature, saying, “Our initial efforts fell short....”

“Our due diligence on the September 24 disclosure revealed the need to search additional terms and OPA employees’ mailboxes.”

Could you tell us what these additional search terms were? Do you remember?

**Ms. Kristin Jenkins:** I don't have the list in front of me.

**Mr. Bob Delaney:** Okay.

**Ms. Kristin Jenkins:** It would have included the proper name of the power plant, Oakville generating station.

**Mr. Bob Delaney:** Okay.

**Ms. Kristin Jenkins:** I can provide you with that list.

**Mr. Bob Delaney:** Well, I think we'll start there in the next round, and I just want to thank you for clearing up some things in this first round of questioning.

Thank you, Chair.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney. You still have 0.5 minutes left, but in any case, Mr. Fedeli?

**Mr. Victor Fedeli:** Thank you very much, Chair, and thank you for being here today. I know you've gone over some of this. I just need it kind of in plain English.

Back in September, the OPA had done the document search based on the criteria they felt was accurate and correct and had your documents somewhat ready to go. Jesse Kulendran and others come in and tell you, “Hang on a second. The documents needed to be correspondence falling within the dates. They needed to mention Oakville, Mississauga. If not mentioned in the correspondence, the correspondence and any attachments were to be excluded, and SWGTA was not to be considered a proxy for Oakville.” Is that clear?

**Ms. Kristin Jenkins:** Yes. The only thing that I would clarify was that the initial search and review of the OPA documents was done in May. It was completed the first week of June.

**Mr. Victor Fedeli:** May—June?

**Ms. Kristin Jenkins:** Yes.

**Mr. Victor Fedeli:** Please?

**Ms. Kristin Jenkins:** And then copies of the Mississauga documents were provided to the ministry in July, and then in August the Oakville documents—and I just say that they were being reviewed by the ministry during that time. We did not have copies of the ministry documents until later.

**Mr. Victor Fedeli:** No, no, not the ministry documents, your OPA documents.

**Ms. Kristin Jenkins:** So when we met with Ms. Kulendran on August 22, when I was asked to attend that meeting, I was told by our general counsel, Mike Lyle, that the purpose of the meeting was for Jesse Kulendran to provide us with the ministry's issues about our documents.

**Mr. Victor Fedeli:** So you turned over OPA documents on Mississauga to the ministry in July, and Oakville in August?

**Ms. Kristin Jenkins:** That's correct.

**Mr. Victor Fedeli:** And they came back to you—Jesse Kulendran comes back to you and says, “Look, you've got too many documents here. Again, it should fall under these four criteria.”

**Ms. Kristin Jenkins:** Yes, and the feedback, again, that Ms. Kulendran provided was specifically to the Oakville non-privileged documents.

**Mr. Victor Fedeli:** So why I read that is, when you read your opening statement, you didn't read those four points and you missed another paragraph down in the middle—on purpose or just by accident?

**Ms. Kristin Jenkins:** I was told that I was going to run out of time.

**Mr. Victor Fedeli:** Oh, okay. So you picked that one to—that's no problem.

So, back then, again you've got—eventually the OPA and the government turned over 36,000 documents to the Clerk and then in October we had another batch of 20,000 documents.

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**Ms. Kristin Jenkins:** Approximately 14,000 of those were OPA documents.

**Mr. Victor Fedeli:** Were OPA?

**Ms. Kristin Jenkins:** Yes.

**Mr. Victor Fedeli:** So in that 14,000, do you go back to what you originally had?

**Ms. Kristin Jenkins:** Yes.

**Mr. Victor Fedeli:** Okay. So you originally had how many thousand?

**Ms. Kristin Jenkins:** In the first disclosure—

**Mr. Victor Fedeli:** Of the 36,000, how many are yours?

**Ms. Kristin Jenkins:** —27,000 pages were the OPA's documents.

**Mr. Victor Fedeli:** That's 27K, OPA. The 20,000 pages—how many thousand? Fourteen thousand?

**Ms. Kristin Jenkins:** Fourteen.

**Mr. Victor Fedeli:** So originally, you had 41,000 documents from the OPA?

**Ms. Kristin Jenkins:** No, you can't do that, because we didn't have the—well, you could say in the original search, we added custodians.

**Mr. Victor Fedeli:** Oh, the three names, right.

**Ms. Kristin Jenkins:** We augmented and we added search terms. We augmented.

**Mr. Victor Fedeli:** So in the original, you had more than 27,000 but less than 41,000?

**Ms. Kristin Jenkins:** Yes.

**Mr. Victor Fedeli:** Okay. Jesse Kulendran comes in and says, "No, you shouldn't put this, this, this or this in"—the four items—"if they say 'SWGTA'" and those other confines, if you will. Why did you eventually, when you turned the 14,000 over to the Clerk, put those back in? Was it somebody's conscience? What happened? How did those 14,000 get re-added back when they were originally pulled out?

**Ms. Kristin Jenkins:** I just want to clarify, and this is actually set out. Mr. Delaney has just referred to the letter. It's tab 13 in the package I circulated, and it's Colin Andersen's transmittal letter to the Clerk on October 12.

The additional search terms, the additional OPA employees that were searched, of those approximately 14,000—you'll see this in the third paragraph of the letter—about 7,600 of those pages resulted in the additional search terms and additional people, and then the balance, about 6,400, resulted from us going back and reviewing the documents that we had excluded based on that August 22 meeting.

**Mr. Victor Fedeli:** So those 6,400 would then have the terms such as "SWGTA," all of the other things—"Mississauga," "Oakville"—all of the words that were pulled out in the first round?

**Ms. Kristin Jenkins:** Yes. I'd like to clarify that we did use proxy terms in both searches, the one that was conducted in May and in September, so that the first disclosure would have had TransCanada, TCE, Greenfield included, in addition to Oakville and Mississauga. But yes, those were included.

**Mr. Victor Fedeli:** Can you just repeat those? Those would have been in the first batch?

**Ms. Kristin Jenkins:** There would have been documents disclosed that refer to TCE, TransCanada, TC, Greenfield, Greenfield South. There would have been documents that were disclosed as part of the 27,000 with all of those terms included in them.

**Mr. Victor Fedeli:** So then you come back with the approximately 7,000 extra ones that have things like "SWGTA" and the other ones that you would have taken out in that first round?

**Ms. Kristin Jenkins:** Yes. They would have been the documents that we had excluded based on the instructions we received on—

**Mr. Victor Fedeli:** So those would have been documents you excluded when you sat—and Jesse Kulendran or whomever else was there that said, "No, that one shouldn't be in. This wording shouldn't be there. You can't use words with that." Is that fair?

**Ms. Kristin Jenkins:** Yes, it's the screen that we applied to these documents.

**Mr. Victor Fedeli:** Okay. I want to direct your attention, then, to your number 10—a very well organized binder, by the way, I might add. You said, down on the bottom, second-last paragraph, "With respect to number 3 above, in preparing the documents" that included correspondence, OGS, TransCanada, TCE, TC etc. Then we roll over to number 11. This is the key messaging, okay? Here's where I'm going to have some difficulty: "The documents were not intentionally left out." Well, they were intentionally—they were in the original package. They were taken out intentionally. "It was a mistake...." What was the mistake? Listening to the Ministry of Energy? Is that the mistake that they're referring to in here? Because the documents were, you told us, in the original. Those 6,400 documents were intentionally removed and then they were intentionally put back in, in the second batch. So how can we say the documents were not intentionally left out? Can you answer that?

**Ms. Kristin Jenkins:** Yes. The first thing I'd like to point out to you is the date on these key messages. They were written on October 1. They were written the day before—at least this draft of them was prepared the day before the OPA was made aware that the approach that we had been applying to our documents was not the approach that the Ministry of Energy had been using. When these key messages were drafted, we felt that we were applying an approach that had been sanctioned by the ministry, by ministry legal; that had been discussed with ministry FOI staff.

**Mr. Victor Fedeli:** So the next day, you had a meeting with Jesse Kulendran. Is that what you're saying?

**Ms. Kristin Jenkins:** No, this is October 1. It's the next day—

**Mr. Victor Fedeli:** When was the meeting with Jesse Kulendran?

**Ms. Kristin Jenkins:** August 22. The day after these Q&As were prepared, Serge Imbrogno informed Colin Andersen that the approach that the OPA was using—on October 2—was not, in fact, what the ministry was using. October 3, I wrote my memo—

**Mr. Victor Fedeli:** Oh, I'm not interested in worrying about whether you line up with the ministry. I understand that.

**Ms. Kristin Jenkins:** Yes. These were written before the OPA knew that there was a problem with the approach that we were using.

**Mr. Victor Fedeli:** I hear you.

So on September 24, 27,000 documents were disclosed. Back in August, you had more than 27,000 documents, some 6,400 more, that were in your original package. You took 6,400 out on the advice of the Ministry of Energy. And on October 1, you're saying docu-



ments were not intentionally left out; it was a mistake. What was the mistake?

**Ms. Kristin Jenkins:** Given the date that these were written, it was the fact that we had left out search terms and we had left out employees that we should have searched.

**Mr. Victor Fedeli:** But you've already given documents on September 24.

**Ms. Kristin Jenkins:** Yes.

**Mr. Victor Fedeli:** You're getting ready now for the second document dump, which came in October.

**Ms. Kristin Jenkins:** Yes.

**Mr. Victor Fedeli:** This is in preparation for that document dump, the second one, that was going to redeliver the original 6,400 documents. Am I correct so far?

**Ms. Kristin Jenkins:** Yes.

**Mr. Victor Fedeli:** Okay.

**Ms. Kristin Jenkins:** No, no, no. I'm sorry; excuse me. No, on October 1, we were not planning to go back and take a look at those 6,400 documents. On October 4, we still felt that we had appropriately screened those documents out based on the instructions that we—

**Mr. Victor Fedeli:** So what do you mean by "Key messages"? Number one, this was October 1: "OPA today disclosed documents that should have been disclosed on September 24...." You're getting ready with the message to give when you give the second document dump.

**Ms. Kristin Jenkins:** That's correct.

**Mr. Victor Fedeli:** Well, that's my point. In the second document dump are going to be those 6,400 missing documents that were originally included in the first document dump that you took out.

**Ms. Kristin Jenkins:** We didn't know that on October 1. We didn't know that until October 2, the following day, when the deputy—

**Mr. Victor Fedeli:** But you say you're disclosing documents that should have been disclosed. Which ones are you talking about? Only the few employee ones?

**Ms. Kristin Jenkins:** No, the employees and the search terms that we left out. If you go back to the letter—

**Mr. Victor Fedeli:** Okay, because it says that down at the bottom. It says, "We left out correspondence from three ... employees"—that's fine—"and did not include some relevant search terms." So you're backtracking; you're now going to bring those relevant search terms that you took out the first time. It's clear. It's plain as could be here.

**Ms. Kristin Jenkins:** No, Mr. Fedeli, can we go back to the transmittal letter for a minute, just so—

**Mr. Victor Fedeli:** No, I want to stick with this letter. You said on October 1, OPA—you're preparing the document for when you do the dump.

**The Chair (Mr. Shafiq Qaadri):** Mr. Fedeli, I'd just respectfully remind all members of the committee that we do allow witnesses, especially of a complex nature, to proceed—

**Mr. Victor Fedeli:** Yes, I appreciate that. I'm asking the questions. I don't want to go back to that document. I want to talk about this one. I haven't got a good answer for this yet. I have not heard the right answer here.

"OPA ... disclosed documents that should have been disclosed on September 24...." Then you say it's the correspondence from three former employees—that's fine; we'll leave them out—"and did not include some relevant search terms." You are talking about the 6,400 documents that you took out.

**Ms. Kristin Jenkins:** No, I'm not. We weren't—

**Mr. Victor Fedeli:** Well, what relevant search terms are you missing? There were more than the ones you just talked about?

**Ms. Kristin Jenkins:** Yes, we ran a number of other search terms. In fact, after October 1, we actually searched more than three OPA employees.

Mr. Fedeli, I guess I'm not expressing myself clearly. There were two reasons why the OPA needed to do another document disclosure. In the first instance, it was because we discovered that we had not, in fact, in May, included enough search terms, and we had not included enough OPA employees. We had not searched the mailboxes of three employees who had left the organization, and then we actually added other current employees to the search in progress.

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On October 2, we then had another reason for doing the second disclosure, and that is when we discovered that the approach that we had applied to screening the documents was not the approach used by the ministry. That resulted in 6,400 pages being disclosed. Searching more OPA employees and searching more search terms resulted in about 7,600—if my math is correct—pages.

So there were two reasons for the disclosure on October 12. One of them was related to the meeting with Ms. Kulendran.

**Mr. Victor Fedeli:** So let me ask you about the meeting with Ms. Kulendran. She told you, at that time, to take out the SWGTA documents? It says here, in your opening statement, "SWGTA ... was not considered a proxy for Oakville." So did she ask you then to take ones with "SWGTA" out, and did they come out?

**Ms. Kristin Jenkins:** Yes, and those instructions are reflected on these Post-it Notes.

**Mr. Victor Fedeli:** So that's fair. She asked you to take those out.

Go to the next page of these key messages. Right in the middle, it says here: "What were the search terms that were left out? The search terms were Oakville Generating Station, OGS, Oakville power plant, Oakville gas plant and Keele Valley. Documents that included the acronym SWGTA, while searched, were left out of the first disclosure. None of this was intentional."

How can it not be intentional when they were in the original batch and she told you to take them out? That's an intentional removal. Why does it say that none of this was intentional? I'm sorry to be so angry here, but I need to hear the truth from you. Why does it say none of this



was intentional? Were these not indeed the documents that you were told to take out, and are these talking points not truthful?

Plain and simple—this is a yes or no. We're at this point now today. We're at a very critical juncture here today. This is a very critical answer from you, and we're ready for it. We're all ready to hear this from you. We're ready to hear this.

**The Chair (Mr. Shafiq Qaadri):** Mr. Fedeli. Sorry. Witnesses are allowed to answer fulsomely. We do not have the privilege to say, "Yes or no."

**Mr. Victor Fedeli:** Answer fulsomely. We're ready to hear the truth here. Were these not the documents that we're referring to, the documents that were pulled out that are referred to in here?

**Ms. Kristin Jenkins:** Mr. Fedeli, it was on October 2 that the instructions that Ms. Kulendran shared with us at that meeting that asked us to use, had held out as the ministry's approach—that we determined that they were not what the ministry had done. These Q&As were written on October 1.

**Mr. Victor Fedeli:** Yes, and you met with Jesse Kulendran in August.

**Ms. Kristin Jenkins:** That's correct.

**Mr. Victor Fedeli:** And she asked you to take out the SWGTA documents in August. She asked you that.

**Ms. Kristin Jenkins:** Yes. Mr. Fedeli, it was as a result of the October 2 meeting with Mr. Andersen that required me to go back and find these documents and review the notes from that meeting. It was on October 2 that we determined that the reason we had excluded the southwest GTA documents was at the instruction of Ms. Kulendran.

**Mr. Victor Fedeli:** Okay. So look at this other line here. The second paragraph on that second page: "Did the government approve the OPA disclosures? Did they review the documents before they were disclosed to the committee?" Your answer in these talking points is, "The government did not see the additional documents before we disclosed them." Are those documents the ones, including the southwest GTA, that they told you to remove?

**Ms. Kristin Jenkins:** This—

**Mr. Victor Fedeli:** So they did see the documents before you disclosed them.

**Ms. Kristin Jenkins:** If I could just explain, and I will answer—

**Mr. Victor Fedeli:** We're trying to hear you.

**Ms. Kristin Jenkins:** I will answer your question, Mr. Fedeli. This sentence was written with respect to the disclosure on October 12. The Ministry of Energy did not request to see the documents prior to our disclosure on October 12, and we knew that they would not be asking to see them.

You are correct that some of the documents that we did disclose on October 12 the ministry had reviewed previously in August, but that wasn't—the intention of this sentence was to say that we had not shared the

second disclosure documents with the ministry prior to the release.

**Mr. Victor Fedeli:** Look: You were asked in August to take documents out. On October 1, talking points are ready here for the second document dump of 20,000, which are going to include documents that were intentionally left out in the first place.

Your notes say the documents were not intentionally left out. It was a mistake. It did not include relevant terms. It was not done intentionally. Some of the records were overlooked. This was not done intentionally. The government did not see—I say to you, they saw them. They told you to take those 6,400 documents out. Whether it was somebody's conscience or your lawyers didn't like the wiggle words that they used and got you to put these documents back in, the way they should have been in the first time, they did see these documents before. They were intentionally left out. It says here it was not intentional, but they were. "SWGTA," while searched, were left out of the first disclosure. None of this was intentional—that's nonsense. You've already told us you took those documents out. It was an intentional removal of those documents. How can you sit there and tell us anything different now by talking about one date? August, October 1, October dump—bing, bang, bong. Now we understand what we mean by "cover-up." We now understand a lot deeper the cover-up and the depth this cover-up goes to. Thank you, Chair.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli. Mr. Tabuns, 10 minutes.

**Mr. Peter Tabuns:** Ms. Jenkins, when the OPA did its initial search, clearly you had a different interpretation from the Ministry of Energy as to which documents were to be taken out. Can you tell us what your interpretation was that gave you a stack of documents that the Ministry of Energy, through Jesse Kulendran, later said, "Take these out"?

**Ms. Kristin Jenkins:** I wasn't involved in the search that was done in May. As I said in my opening statement, I only became involved in the document disclosure process itself on August 22 when I was asked to attend the meeting with Jesse Kulendran. I can't give you the specifics of the process and the searching that was undertaken in May. I could follow up with you, but I don't have that knowledge first-hand.

**Mr. Peter Tabuns:** In fact, if I could ask, through the Chair, yes, I would like a note back asking what the parameters were that the OPA used prior to these instructions given by Jesse Kulendran.

**The Chair (Mr. Shafiq Qaadri):** Noted.

**Mr. Peter Tabuns:** The second thing is, those documents beside you, quite a few were not disclosed the first round through. They were marked with Post-it Notes. Were they disclosed in the second round?

**Ms. Kristin Jenkins:** Everything in the pile that is related to the estimates committee motion has been disclosed.

**Mr. Peter Tabuns:** So everything that's in that pile beside you we have photocopies of?



**Ms. Kristin Jenkins:** Yes.

**Mr. Peter Tabuns:** Not marked, but they were the ones that were initially taken out of the process?

**Ms. Kristin Jenkins:** Yes.

**Mr. Peter Tabuns:** You were trying to put forward your analysis to Mr. Fedeli as to the sequence of events. Could you please give me your analysis of how it came to be that your statement, or the statement that the OPA put out about document release, and the actuality of the documents were different?

**Ms. Kristin Jenkins:** First of all, this was a draft, and it was revised after the information that we received on October 2. So this statement was not put out; it was an early draft. It was being proactively prepared. As you know, the documents were not disclosed till October 12, and the date on this is October 1.

Colin Andersen informed Mike Lyle and I on October 2, as I've said, that the approach that we had been using was not what the ministry had been using, and there were a couple of things. First and foremost, he said we had to go back—and we all knew this, that we had to go back and we had to make sure that anything that we had screened out based on that approach we needed to go back and make sure that we were disclosing all of the relevant documents.

We had a massive search going on at the time. As I said, it wasn't just three more employees. There were a number of other employees and other search terms that were generating lots of documents. We had to make sure that the staff that were doing that work knew that the screening process had changed.

Mr. Andersen also asked me, given this difference in approach in what I and my colleague Ziyaad Mia had been consistently you know, had reported back to the OPA—Mr. Andersen wanted to obviously understand and be clear that this is what had taken place at the meeting.

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That caused me to go back and review my meeting notes on October 3 and speak to Mr. Mia, and it was through that process, to the specific point of southwest GTA, that it was determined—we knew that at “southwest GTA,” when we started doing the second search, we had excluded documents with “southwest GTA.” At that point, when that was discovered, we were focused on doing the other searches, making sure that those—and didn't give a lot of thought to it other than, “Here's another example of documents that we've left out.”

It wasn't until the second, when we found these documents, when we started reviewing our notes from the meeting—I mean, it had been a month. A month had passed since we had met with Ms. Kulendran. You've got a chronology in here of the document disclosure. You can see that, in addition to the document disclosure, we had also been negotiating the deal with TransCanada. There was a lot going on.

So when we went back and reviewed the notes from the meeting, we discovered that the reason that the SWGTA materials had not been disclosed was that it was

part of the screen that Ms. Kulendran had, and that's why I point to the date, because it's important. The document was drafted before we received that critical information from the deputy that our approach was not what the ministry was using.

**Mr. Peter Tabuns:** So in fact, these draft talking points were superseded by the information you got the next day?

**Ms. Kristin Jenkins:** Yes.

**Mr. Peter Tabuns:** On October 3, your email to Colin Andersen said effectively, “Colin, you know there's a lot more going on here and that we were told to exclude documents, so in fact these draft talking points are no longer valid”?

**Ms. Kristin Jenkins:** That's correct. Our final communications materials for the October 12 disclosure are different than this draft of October 1.

**Mr. Peter Tabuns:** Are they in this package of—

**Ms. Kristin Jenkins:** No, they are not.

**Mr. Peter Tabuns:** Could you please provide us with a copy of those final talking points?

**Ms. Kristin Jenkins:** Yes.

**Mr. Peter Tabuns:** Noted by the Chair, noted by the Clerk; it's now official.

You must have been very disturbed when you realized that you had been given instructions that were contrary to the intention of the committee and contrary to what even the Ministry of Energy was doing.

**Ms. Kristin Jenkins:** I think that I and everyone at the OPA was very concerned that we disclose all of the documents, make best efforts to disclose all of the documents that were responsive to the estimates committee motion. At the time, there was debate going on in the House around the contempt motion. We had always taken the committee's request very seriously. As soon as we realized—we realized on September 25 that we likely had—there were other documents. We were conducting due diligence. The disclosure had gone out the day before. We were kind of doing the wrap-up work and determined. We had to look into it, and by the 27th, Mr. Andersen had notified the Clerk of the Committee. We had started the work to carry out those searches on the 27th, and staff worked around the clock, weekends, to make sure that the materials got out. So yes, we were concerned that we had not disclosed all of the documents.

**Mr. Peter Tabuns:** Did you use an outside firm for the second phase, to help you pull together the documents?

**Ms. Kristin Jenkins:** We did have some assistance from a law firm, Goodmans, to help us identify the documents that we were finding in our second search that were potentially duplicative with the first search. We didn't want to—and after the first search and before the October second search, we acquired eDiscovery software, which now enables us to do a much more thorough job of searching records. So we did use that for the second search, but because—we weren't able—the first search had not been done that way, we had to, in some instances, compare, and we did get outside assistance to



help us identify the records that we had already disclosed.

**Mr. Peter Tabuns:** You were involved with the second search, then?

**Ms. Kristin Jenkins:** Yes, I was part of discussions. Yes, I was involved. I again helped ensure that the work was carried out and that the CEO was kept informed as to the progress of the search, yes.

**Mr. Peter Tabuns:** And you were recovering emails from staff who had left the OPA?

**Ms. Kristin Jenkins:** Yes.

**Mr. Peter Tabuns:** Who had left within the last four months or five months?

**Ms. Kristin Jenkins:** I'm not sure that we set a time period. We looked at staff who had left during the time—who had been present at the OPA during the time period covered by the motion who would have been involved with the gas plant documents. Then we searched those employees.

**Mr. Peter Tabuns:** Thank you. You've been very thorough.

**The Chair (Mr. Shafiq Qaadri):** To the government side. Mr. Delaney, 10 minutes.

**Mr. Bob Delaney:** How are you feeling?

**Ms. Kristin Jenkins:** Good.

**Mr. Bob Delaney:** Good.

Jesse Kulendran was here under oath. She testified at that time that she hadn't done anything inappropriate and that she didn't tell you to withhold documents with regard to some of the points brought up by my colleague on the opposite side relative to that term "SWGTA." Just for the committee and the witness, Ms. Kulendran said, "In reviewing the documents, it became apparent that it seemed" that they "searched the term 'SWGTA,' and as a result, it captured documents related to issues in the area but not related to the gas plant."

The Deputy Minister of Energy, whom Mr. Fedeli confirmed was, to use his words, "credible" and "a very solid witness," testified before the committee that he believes Ms. Kulendran's summary of the meeting. He said, "I never directed Jesse to go the OPA and ask them to exclude documents. I never myself directed the OPA to exclude ... documents. When I talked to Jesse about the allegations, she told me ... she did not direct the OPA. I have no reason to not believe what Jesse has" said.

In fact, Secretary Wallace launched an investigation into the allegations that were contained in the memo that you wrote, which I think we've explored very thoroughly at this point, and confirmed that there's no evidence that Ms. Kulendran acted inappropriately. Would that synopsis seem familiar to you? Would you agree with that?

**Ms. Kristin Jenkins:** I'm familiar and I'm aware of the deputy's testimony and Ms. Kulendran's testimony. But no, I don't agree with everything that you've said.

**Mr. Bob Delaney:** Okay. We'll come back to that.

Going back to your October 3 memo, it seems you sent it to just a small group of people: your CEO, Colin Andersen; Ziyaad Mia; Mike Lyle—anybody else?

**Ms. Kristin Jenkins:** No.

**Mr. Bob Delaney:** Okay. Did you forward it after sending it or at any other time to anyone other than the intended recipients?

**Ms. Kristin Jenkins:** Yes.

**Mr. Bob Delaney:** Do you know who you forwarded it to?

**Ms. Kristin Jenkins:** I do.

**Mr. Bob Delaney:** Who?

**Ms. Kristin Jenkins:** His name is Will McDowell. He's a lawyer that I retained last fall.

**Mr. Bob Delaney:** Okay. Will McDowell.

**Ms. Kristin Jenkins:** Yes.

**Mr. Bob Delaney:** It was subsequently leaked. Do you know who might have leaked it?

**Ms. Kristin Jenkins:** I do not.

**Mr. Bob Delaney:** In forwarding it to Mr. McDowell, would Mr. McDowell know who may have leaked it?

**Ms. Kristin Jenkins:** Not that I'm aware of.

**Mr. Bob Delaney:** I ask this only because this leak resulted in some fairly serious one-sided allegations against Ms. Kulendran, who didn't have the opportunity to defend herself until just recently at this committee.

I'd like to ask you about another memo dated January 25 of this year, 2013, on the OPA's decision to retain Lenczner Slaght and its lawyers to prepare potential witnesses. You're familiar with the memo?

**Ms. Kristin Jenkins:** Yes, I saw it last week.

**Mr. Bob Delaney:** On April 9, Mr. Leone stood up in the Legislature to question the government on this "leaked document," which were his words, which he said "the OPA produced to us." Who would have provided that document to the Progressive Conservatives?

**Ms. Kristin Jenkins:** I don't know.

**Mr. Bob Delaney:** With regard to that, what type of legal advice could be helpful to a witness such as yourself?

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**Ms. Kristin Jenkins:** This is the first time that I've appeared before a legal proceeding, a legislative committee, as is the case with most of our colleagues. So Lenczner Slaght has assisted us, given us advice such as, "Listen to the question; read the documents. Even if it's your document, reread it before you answer," and feedback on the way that we're answering the questions.

I'd also like to point out that Lenczner Slaght was also retained to conduct a review, at the request of our board, around the whole document disclosure process, and that's also part of the work that they did. So they interviewed staff, including myself, and did a report to our board of directors a couple of months ago providing a chronology of the document disclosure process as well as recommendations on improvements for moving forward.

We have developed a new framework for document disclosure which we put into practice with the Auditor General on the audit of the Mississauga gas plant and the document disclosure associated with that audit.

**Mr. Bob Delaney:** Okay. Did you talk with anyone other than Mr. McDowell about what questions you may be asked and what you might say?



**Ms. Kristin Jenkins:** The lawyers that are listed in the retainer letter with Lenczner Slaght.

**Mr. Bob Delaney:** Okay. Did you speak with anyone from any of the parties, the members or the staff about this committee and what your testimony would be?

**Ms. Kristin Jenkins:** No.

**Mr. Bob Delaney:** Okay. Is there something you would like to say to us that we haven't asked you at this point?

**Ms. Kristin Jenkins:** I know that Ms. Cansfield asked my colleague, JoAnne Butler, about any advice on doing things differently or improvements—and I'm not going to speak to the actual siting of gas plants. Around document disclosure, I mentioned that Lenczner Slaght—part of their work was to do a review and make recommendations. They're litigation lawyers; they have expertise in document disclosure. We also got advice from PricewaterhouseCoopers; they prepared a report for us as well.

I think that one of the things that we've learned is that, in the future, with these types of requests we need a written protocol with the ministry. We also need to have a clear understanding with the requesters of the information so that everybody's clear upfront on what we're doing and we're clear on what the expectations are. So I would say that we feel that that's really important going forward.

**Mrs. Donna H. Cansfield:** Do I have a couple of moments?

**The Chair (Mr. Shafiq Qaadri):** Three.

**Mrs. Donna H. Cansfield:** Thank you. Actually, it was interesting; this morning we had Shelly Jamieson in, and I asked a similar question. Shelly spoke to the same issue, I guess, within the government: that they do have some processes and that a review of those processes would make some sense, because that's an extraordinarily large document search.

I know it's common practice to use a variety of names, and so, unless you have one of those famous appendixes at the back—half the time I don't know what half of the acronyms mean anyway.

The part that I would be really interested in—and I've asked this question of everyone—is the consultation process. I must admit, in the past I haven't always favourably looked on OPA's consultation processes; I've probably been a good critic. But it would be interesting to hear your perspective on how you could move forward and improve that. It's one of the most difficult things in this world to do: to consult.

**Ms. Kristin Jenkins:** I think that what we've learned in the OPA and the ministry is that consultation needs to happen very early on in the process, before the big decisions get made. I think that's a key thing. That's something that the OPA—we have a number of regional planning initiatives under way: Kitchener-Waterloo and York region and Toronto region. Consultation is happening right from the start of these planning processes so that once a decision is made to proceed with a piece of large electricity infrastructure, the community and local

officials are aware of the need, and it's not a surprise, and we're getting their input so that we can make sure that we understand where the best location is and can make sure that the local decision-makers also have the information that they need and that the communities are aware. So yes, I agree with you that consultation early on in the planning process, before the big decisions are made, is critical.

**Mrs. Donna H. Cansfield:** Thank you very much. That was very insightful.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Ms. Cansfield.

Mr. Yakabuski, 10 minutes.

**Mr. John Yakabuski:** Thank you very much, Ms. Jenkins, for joining us today. You prepared a very thorough document dossier to help us along.

I just wanted to reiterate a couple of things because there have been differing viewpoints. Would it be fair to say that the Ministry of Energy and the OPA had two different ideas about what should be included in the document disclosure?

**Ms. Kristin Jenkins:** Certainly, when we left the meeting on August 22, we had been provided—we, my colleague Ziyaad Mia and myself—Ms. Kulendran had presented us with a set of instructions that were different than what we had used to review our documents for relevancy.

**Mr. John Yakabuski:** So the answer is yes.

**Ms. Kristin Jenkins:** Yes.

**Mr. John Yakabuski:** So there is a different view on what should be included in a disclosure?

**Ms. Kristin Jenkins:** Mr. Yakabuski, as it turned out—I just want to be clear, so as to not cause confusion with the Ministry of Energy. In fact, that's not what the Ministry of Energy was doing. They didn't screen their documents in that way. That's what we found out on October 2. But on August 22, we believed that what—

**Mr. John Yakabuski:** You had a directive.

**Ms. Kristin Jenkins:** And that what Ms. Kulendran had told us—she had led us to believe that that was in fact what the ministry was doing to screen its documents.

**Mr. John Yakabuski:** Would it be fair to say that they were trying to keep this as tight as possible with respect to the disclosures—that they would have the greatest amount of control over what documents were actually released?

**Ms. Kristin Jenkins:** I can't answer that question.

**Mr. John Yakabuski:** Okay.

I want to ask you about your final talking points, and we don't have them here. Is there anything in those final talking points that immediately comes to mind that was significantly, categorically different than the ones you spoke about earlier, in the document in number 11?

**Ms. Kristin Jenkins:** Yes. There is one thing that I can certainly remember: On the first page, the second-to-last bullet says, "OPA staff realized that there were additional documents when they were carrying out"—what we did was we added another reason for disclosing the documents. The language that was added to these key



messages is consistent with the language that was in Colin Andersen's transmittal letter to the Clerk on the 12th, which was to say, we had to do more searching; there was an issue with the approach that we used with respect—there's a variance with the ministry, so that there were clearly two reasons why we did the disclosure on October 12. I know that is one distinction between the two documents. As I said, I will provide the committee with—

**Mr. John Yakabuski:** Very good. Thank you, Kristin.

I want to talk about the auditor's report on Mississauga. The committee ordered the auditor to investigate this. All of the response to the report has been written by the OPA. The government, politically, decided to cancel the plant. Do you find it peculiar that there's no response in this from the minister or the ministry? The responses are only from the OPA. Again, it appears to me that the government is putting the onus of this on the OPA, as opposed to the ministry or the Premier.

**Ms. Kristin Jenkins:** I think, given the mandate and the scope of the audit, that the OPA was heavily relied on. At the end of the day, it is our contract.

**Mr. John Yakabuski:** Understood. It was cancelled by the government. Do you not think that a response should have come from the minister?

**Ms. Kristin Jenkins:** I'm not going to question the Auditor General's approach. I would say that I think that the fact that the government asked the OPA not to proceed with the plant is reflected in the auditor's report.

**Mr. John Yakabuski:** Let's talk about numbers. You've been with the OPA for some time. You were also part of negotiating when they were dealing with the TransCanada issue at Oakville. We know the auditor's report says that the government lied about the amount that the cost would be to the taxpayers and the ratepayers of Ontario. I suspect that you knew that—when I say “you,” I mean you people at the OPA; you knew that that would end up being the facts as they were released.

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We're now being told that the Oakville plant will cost \$40 million. The cost of cancellation and relocation of the Oakville plant will cost \$40 million. JoAnne Butler, your associate at the OPA, does not agree with those numbers. Are you aware of what the Oakville plant will actually cost—the cost of the cancellation and relocation?

**Ms. Kristin Jenkins:** No, I'm not.

**Mr. John Yakabuski:** You're not aware?

**Ms. Kristin Jenkins:** No, I'm not aware of the total number.

**Mr. John Yakabuski:** Of the total number? Can you tell me some numbers that you are aware of that would exceed \$40 million?

**Ms. Kristin Jenkins:** As the OPA and my colleague JoAnne Butler have discussed publicly, there are costs associated with gas management and delivery. There are also costs associated with connecting the new facility, the Napanee Generating Station, to the grid, and there are costs associated with the transmission upgrades that will

have to be advanced in the southwest GTA as a replacement for the power plants that weren't built there.

**Mr. John Yakabuski:** We've heard of numbers like approximately \$200 million for transmission, \$370 million or something for gas, and \$210 million for turbines that will be recovered over the period of the contract. In addition to that \$40 million, would you agree with those numbers?

**Ms. Kristin Jenkins:** What I can agree with, Mr. Yakabuski, is that there will be additional costs that have to be taken into account. As the Auditor General pointed out with the Mississauga audit, there are also savings associated with the relocations of these plants. Those costs and those savings—as well as the value, as the auditor pointed out, with the contract payments starting later—all have to be factored in. I personally don't have the numbers associated with many of the categories that I've raised. Some of them we don't know yet because more engineering work needs to be done. But I think it is important to take into account that there will be some savings that also need to be factored in, as was the case with Mississauga, when looking at the total cost of the relocation of the Oakville plant.

**Mr. John Yakabuski:** And those savings will in no way ever amount to the amount that the government is talking about. Would you agree with that? Under no circumstances is \$40 million going to be the cost of this cancellation and relocation.

**Ms. Kristin Jenkins:** The \$40 million are the sunk costs. They're the costs that were incurred for Oakville that cannot be reused at Napanee. I do not know what the total cost of relocation of the Napanee plant will be. That is yet to be determined. As I said, there are costs that still need to be identified and there are savings that also need to be taken into account.

**Mr. John Yakabuski:** I take that as, you are absolutely in agreement with us that that will be well over \$40 million. And we'll all find that out when the next report comes out.

Tell me, Ms. Jenkins: Can you walk me through any discussions that you may have had with members of the government, members of the ministry, about messaging and communicating this gas plant debacle, specifically dealing with questions arising about the costs and the document drop or the document disclosure, if you want to call it that, discussions that you had with members of the government or specifically the Minister of Energy or the Premier's office or anyone like that?

**Ms. Kristin Jenkins:** I'm remembering this generally. Discussions that we would have had around costs with respect to the document disclosure would have been focused on the fact that these documents covered a period from—a lot of the cost figures that were in the documents that were being disclosed were out of date.

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Ms. Kristin Jenkins:** They were early calculations. As you know, the relocation agreements were signed in 2012, and these documents only reflected up until the end



of 2011. So the discussions around costs would have been that they were not the most recent cost figures.

**Mr. John Yakabuski:** Okay. You mentioned in your response to Mr. Delaney that the only one who can specifically or categorically direct the OPA is the minister themselves, and they would do that by written directive.

**Ms. Kristin Jenkins:** That's correct.

**Mr. John Yakabuski:** But there was no question in your mind that, as an agent of the ministry, Jesse Kulendran was directing you at the OPA?

**Ms. Kristin Jenkins:** Ms. Kulendran gave us a set of instructions, told us that we needed to use them and we needed to be consistent with the ministry—

**Mr. John Yakabuski:** So she was directing you.

**Ms. Kristin Jenkins:** Yes, but I'd like to point out that, as with the decision to not proceed with the plant in Oakville, the government, in fact, did not have the legal authority to direct us not to proceed. We chose not to—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Yakabuski, and thanks to you, Ms. Jenkins, for your testimony and presence.

I understand we have a motion before the floor, and I invite Mr.—

**Mr. Rob Leone:** May I have a point of order?

**The Chair (Mr. Shafiq Qaadri):** Yes, Mr. Leone.

**Mr. Rob Leone:** It has happened on a number of occasions where, and I realize that you're sticking to the tight timelines, but just in the response from Ms. Jenkins, who was cut off at the very end—I'm hoping that maybe we could have a little bit of leniency and allow particularly some of our witnesses to finish their thoughts, if that would be agreeable. I don't think it sends the right signal, that we're cutting people off mid-sentence. So I wonder if we could have a little bit of leniency—

**The Chair (Mr. Shafiq Qaadri):** We encourage you in your hopes, Mr. Leone. This was all decided by subcommittee. You do have 1.5 hours per witness, and I would encourage you to be more efficient, because I think that's probably the longest period of time that probably any witness has been heard. But it's the will of the committee.

Yes, may I have the motion now?

**Mr. Peter Tabuns:** I move that the Auditor General (AG) be invited, as a neutral witness, to the Standing Committee on Justice Policy on Wednesday, April 17, 2013, from 3:15 p.m. to 5:15 p.m., if available, in order to present and discuss the Auditor General's Special Report on the Mississauga Power Plant Cancellation Costs; and

That the AG be scheduled for 100 minutes, with 10 minutes for his opening remarks, followed by a total of 30 minutes for questions by all parties on a rotational basis.

As you may note, Chair, 3:15 to 5:15 is two hours, but I leave room for breaks or recesses.

**The Chair (Mr. Shafiq Qaadri):** Thank you. And more importantly, the operative phrase there is "if available."

Are there any questions before we vote on this particular motion, which is in order?

Seeing none, those in favour? Those opposed? The motion is carried.

If there's no further business before—

*Interjection.*

**The Chair (Mr. Shafiq Qaadri):** Yes, Mr. Delaney?

**Mr. Bob Delaney:** Chair, this may end up with a request to convene a subcommittee. Earlier today, as we said, the Clerk did their best to try to schedule any of four government witnesses, none of whom were able to appear this afternoon.

I'm just going to try once to see whether there's any consensus at committee or whether or not we should move this into subcommittee. In the event that this happens to any party, would it be the will of the committee that either you do two in a row or you skip a rotation? Those seem to be the two alternatives, and frankly, I'm fine with either one.

**Mr. Peter Tabuns:** It's a subcommittee matter.

**Mr. Bob Delaney:** A subcommittee matter?

**The Chair (Mr. Shafiq Qaadri):** A subcommittee matter. We'll refer it—

**Mr. Bob Delaney:** A subcommittee it will be, then.

**The Chair (Mr. Shafiq Qaadri):** No further business? Okay; committee is adjourned.

*The committee adjourned at 1638.*







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